

1 04 NCAC 10A .0102 is amended as follows:

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3 **04 NCAC 10A .0102 OFFICIAL FORMS**

4 ~~(a) The Industrial Commission will remain in continuous session subject to the call of the Chairman to meet as a~~  
5 ~~body for the purpose of transacting such business as may come before it.~~

6 ~~(b) In reviewing an Opinion and Award of a Deputy Commissioner or of a sole Commissioner acting as the hearing~~  
7 ~~officer, the Full Commission may sit en banc or in panels of three.~~

8 (a) Copies of the Commission's rules and forms may be obtained by contacting the Commission in person, by  
9 written request mailed to 4340 Mail Service Center, Raleigh, NC 27699-4340, Attn.: Administrator, or from the  
10 Commission's website at <http://www.ic.nc.gov/forms.html>.

11 (b) The use of any printed forms other than those provided by the Commission is prohibited except that insurance  
12 carriers, self-insured employers, attorneys and other parties may reproduce forms for their own use, provided:

13 (1) no statement, question, or information blank contained on the Commission form is omitted from  
14 the substituted form, and

15 (2) the substituted form is identical in size and format with the Commission form.

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17 *History Note: Authority G.S. 97-80(a); 97-81(a);*

18 *Eff. January 1, 1990;*

19 *Amended Eff. April 1, 2014; June 1, 2000.*

1 04 NCAC 10A .0405 is amended as follows:

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3 **04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION**

4 ~~(a) Amputation of any portion of the bone of a distal phalange of a finger or toe at or distal to the visible base of the~~  
5 ~~nail will be considered as equivalent to the loss of one fourth of such finger or toe.~~

6 ~~(b) Amputation of any portion of the bone of the distal phalange of a finger or toe proximal to the visible base of the~~  
7 ~~nail will be considered as equivalent to the loss of one half of such finger of toe.~~

8 ~~(c) Amputation through the forearm at a point so distal to the elbow as to permit satisfactory use of a prosthetic~~  
9 ~~appliance with retention of full natural elbow function shall be considered amputation of the hand. Otherwise, it~~  
10 ~~shall be considered amputation of the arm.~~

11 ~~(d) Amputation through the lower leg at a point so distal to the knee as to permit satisfactory use of a prosthetic~~  
12 ~~appliance with retention of full natural knee function shall be considered amputation of the foot. Otherwise, it shall~~  
13 ~~be considered amputation of the leg.~~

14 (a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks  
15 reinstatement of compensation pursuant to G.S. 97-18(k), the employee may notify the employer, carrier, or  
16 administrator, and the employer's, carrier's, or administrator's attorney of record, on a Form 23 Application to  
17 Reinstate Payment of Disability Compensation, or by the filing of a Form 33 Request that Claim be Assigned for  
18 Hearing.

19 (b) When reinstatement is sought by the filing of a Form 23 Application to Reinstate Payment of Disability  
20 Compensation, the original Form 23 Application to Reinstate Payment of Disability Compensation and the attached  
21 documents shall be sent to the Commission at the same time and by the same method by which a copy of the Form  
22 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or  
23 administrator's attorney of record. The employee shall specify the grounds and the alleged facts supporting the  
24 application and shall complete the blank space in the "Important Notice to Employer" portion of Form 23  
25 Application to Reinstate Payment of Disability Compensation by inserting a date 17 days from the date the  
26 employee serves the completed Form 23 Application to reinstate Payment of Disability Compensation on the  
27 employer, carrier, or administrator and the attorney of record, if any. The Form 23 Application to Reinstate Payment  
28 of Disability Compensation shall specify the number of pages of documents attached that are to be considered by the  
29 Commission. Within 17 days from the date the employee serves the completed Form 23 Application to Reinstate  
30 Payment of Disability Compensation on the employer, carrier, or administrator and the attorney of record, if any, the  
31 employer, carrier, or administrator shall complete Section B of the Form 23 Application to Reinstate Payment of  
32 Disability Compensation and send it to the Commission and to the employee, or the employee's attorney of record,  
33 at the same time and by the same method by which the form is sent to the Commission.

34 (c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review  
35 the Form 23 Application to Reinstate Payment of Disability Compensation and attached documentation and, without  
36 an informal hearing, render an Administrative Decision or Order as to whether there is sufficient basis under the  
37 Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be rendered

1 within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a  
2 response to the Form 23 Application to Reinstate Payment of Disability Compensation. Either party may seek  
3 review of the Administrative Decision and Order as provided by Rule .0703 of this subchapter.

4 (d) If the employer, carrier, or administrator timely objects to the Form 23 Application to Reinstate Payment of  
5 Disability Compensation, the Commission shall conduct an informal hearing within 25 days of the receipt by the  
6 Commission of the Form 23 Application to Reinstate Payment of Disability Compensation unless the time is  
7 extended for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record  
8 personally present with the Commission. The Commission shall make arrangements for the informal hearing with a  
9 view toward conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30  
10 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the  
11 foregoing, the employee may waive the right to an informal hearing and proceed to a formal hearing by filing a  
12 request for hearing on a Form 33 Request that Claim be Assigned for Hearing. Either party may appeal the  
13 Administrative Decision and Order of the Commission as provided by Rule .0703 of this subchapter. A Deputy  
14 Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and  
15 shall not require a Form 33 Request that Claim be Assigned for Hearing. The employee has the burden of producing  
16 evidence on the issue of the employee's application to reinstate compensation. If the Deputy Commissioner reverses  
17 an order previously granting a Form 23 Application to Reinstate Payment of Disability Compensation motion, the  
18 employer shall promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision,  
19 notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

20 (e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order  
21 to that effect, that shall be in lieu of a Form 33 Request that Claim be Assigned for Hearing, and the case shall be  
22 placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or  
23 administrator shall file a Form 33 Request that Claim be Assigned for Hearing or notify the Commission that a  
24 formal hearing is not currently necessary, within 30 days of the date of the Administrative Decision or Order. The  
25 effect of placing the case on the docket shall be the same as if the Form 23 Application to Reinstate Payment of  
26 Disability Compensation was denied, and compensation shall not be reinstated until such time as the case is decided  
27 by a Commissioner or a Deputy Commissioner following a formal hearing.

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29 *History Note: Authority G.S. 97-18(k); 97-80(a);*  
30 *Eff. January 1, 1990;*  
31 *Amended Eff. April 1, 2014.*

1 04 NCAC 10A .0410 is adopted as follows:

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3 **04 NCAC 10A .0410 SAFETY RULES**

4 The safety rules or regulations adopted by an employer qualify as approved by the Commission within the meaning  
5 of G.S. 97-12 if the following requirements are satisfied:

6 (1) The rules include the general provisions of the safety rules outlined by the American National  
7 Standards Institute and the Occupational Safety and Health Act.

8 (2) The rules have been filed in writing with the Commission's Safety Education Director.

9 (3) A copy of the rules bearing a certificate of approval from the Commission has been returned to the  
10 employer. The certificate of approval shall indicate that the rules have been reviewed and found  
11 by the Safety Education Director of the Commission to be in compliance with the general rules of  
12 the American National Standards Institute and the Occupational Safety and Health Act and that the  
13 rules are approved by the Commission pursuant to G.S. 97-12.

14

15 *History Note: Authority G.S. 97-12; 97-80(a);*

16 *Eff. April 1, 2014.*

1 04 NCAC 10A .0601 is amended as follows:

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3 **SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES**

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5 **04 NCAC 10A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND**  
6 **SANCTIONS**

7 ~~(a) The employer or its insurance carrier shall promptly investigate each injury reported or known to the employer~~  
8 ~~and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment~~  
9 ~~of compensation as provided in G.S. 97-18(b), (c), or (d).~~

10 ~~(b)(a) When an~~ Upon the employee's ~~employee files~~ filing of a claim for compensation with the Commission, the  
11 Commission may order reasonable sanctions against the employer or its insurance carrier ~~which if it~~ does not, within  
12 30 days following notice from the Commission of the filing of the claim, or 90 days when a disease is alleged to be  
13 from exposure to chemicals, fumes, or other materials or substances in the workplace, ~~or within such reasonable~~  
14 ~~additional time as the Commission may allow,~~ do one of the following:

- 15 (1) ~~Notify~~ File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify the  
16 Commission and the employee in writing that ~~the employer~~ is admitting the employee's right to  
17 compensation and, if applicable, satisfy the requirements for payment of compensation under G.S.  
18 97-18(b);
- 19 (2) ~~Notify~~ File a Form 61 *Denial of Workers' Compensation Claim* to notify the Commission and the  
20 employee that ~~the employer~~ denies the employee's right to compensation consistent with G.S.  
21 97-18(c);
- 22 (3) File a Form 63 *Notice to Employee of Payment of Compensation Without Prejudice* ~~Initiate~~  
23 payments without prejudice and without liability and satisfy the requirements of consistent with  
24 G.S. 97-18(d).

25 ~~For purposes of this Rule, reasonable sanctions shall not prohibit the employer or its insurance carrier from~~  
26 ~~contesting the compensability of and its liability for the claim.~~

27 Requests for extensions of time to comply with G.S. 97-18(j) ~~this rule may~~ shall be addressed to the ~~Executive~~  
28 ~~Secretary.~~ Claims Administration Section.

29 ~~(c)(b) If the employer or insurance carrier denies~~ When liability in any case, case is denied, the employer or  
30 insurance carrier shall provide a detailed statement of the basis of denial ~~must that shall~~ be set forth in a letter of  
31 denial or Form ~~64,~~ 61 *Denial of Workers' Compensation Claim,* and which that shall be sent to the ~~plaintiff or~~  
32 ~~his employee's~~ attorney of record, if any record or the employee, if unrepresented, all known health care  
33 providers ~~which who~~ have submitted bills and provided medical records to the ~~employer/carrier,~~ employer or carrier,  
34 and the ~~Industrial~~ Commission. ~~The detailed statement of the basis of denial shall set forth a statement of the facts,~~  
35 ~~as alleged by the employer, concerning the injury or any other matter in dispute; a statement identifying the source,~~  
36 ~~by name or date and type of document, of the facts alleged by the employer; and a statement explaining why the~~  
37 ~~facts, as alleged by the employer, do not entitle the employee to workers' compensation benefits.~~

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2 *History Note:* Authority G.S. 97-18; 97-80(a); 97-81(a);

3 *Eff. January 1, 1990;*

4 *Amended Eff. April 1, 2014; August 1, 2006; June 1, 2000.*

1 04 NCAC 10A .0603 is amended as follows:

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3 **04 NCAC 10A .0603 RESPONDING TO A PARTY'S REQUEST FOR HEARING**

4 (a) No later than 45 days from receipt of ~~the Request~~ a request for Hearing, hearing from an employee, the self-  
5 insured employer, insurance carrier, or counsel for the defendant(s) shall file with the ~~Industrial~~ Commission a  
6 response to the ~~Request~~ request for Hearing, hearing.

7 (b) ~~This~~ The response shall contain the following:

- 8 (1) ~~The~~ the basis of the disagreement between the parties, including a statement of the ~~specific~~ issues  
9 raised by the ~~plaintiff~~ moving party ~~which~~ that are conceded and the ~~specific~~ issues raised by the  
10 ~~plaintiff~~ moving party which are ~~denied~~ denied;
- 11 (2) ~~The~~ the date of the injury; if it is contended to be different than that alleged by the ~~plaintiff~~.  
12 moving party;
- 13 (3) ~~The~~ the part of the body injured; if it is contended to be different than that alleged by the ~~plaintiff~~.  
14 moving party;
- 15 (4) ~~The~~ the city and county where the injury occurred; if they are ~~contended~~ contended to be different  
16 than that alleged by the ~~plaintiff~~ moving party;
- 17 (5) ~~The~~ the names and addresses of all doctors and other expert witnesses whose testimony is needed  
18 by the ~~defendant(s)~~ non-moving party;
- 19 (6) ~~The~~ the names of all lay witnesses known by the ~~defendant(s)~~ non-moving party whose testimony  
20 is to be ~~taken~~ taken;
- 21 (7) ~~An~~ an estimate of the time required for the hearing of the ~~case~~ case; and
- 22 (8) ~~The~~ the telephone ~~number(s)~~ number(s), ~~and~~ address(es) email address(es), and mailing  
23 address(es) of the party(ies) responding to the ~~Request for Hearing~~ request for hearing and their  
24 legal counsel.

25 (c) ~~Utilization of a~~ A Form 33R, ~~Response to Request for Hearing~~, 33R Response to Request that Claim be  
26 Assigned for Hearing, which is completed in full and filed with the Docket Section of the Commission, shall ~~be the~~  
27 ~~sole means of~~ constitute compliance with this Rule. A copy of the Form 33R Response to Request that Claim be  
28 Assigned for Hearing ~~Response to Request for Hearing~~ shall be forwarded to the attorneys for all opposing parties or  
29 ~~attorneys, if such have been retained~~ the opposing parties themselves, if unrepresented. ~~In the event of a request for~~  
30 ~~hearing by a defendant, the employee shall not be required to respond~~. ~~Extensions of time within which to file a~~  
31 ~~response shall be granted for good cause shown~~.

32  
33 *History Note:* Authority G.S. 97-80(a); 97-83;  
34 Eff. January 1, 1990;  
35 Amended Eff. April 1, 2014; June 1, 2000.

1 04 NCAC 10A .0605 is amended as follows:

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3 **04 NCAC 10A .0605 DISCOVERY**

4 In addition to depositions and production of books and records provided for in G.S. 97-80, parties may obtain  
5 discovery by the use of interrogatories as follows:

6 (1) Any party may serve upon any other parties written interrogatories, up to 30 in number, including  
7 subparts thereof, to be answered by the party served or, if the party served is a public or private  
8 corporation or a partnership or association or governmental agency, by any officer or agent, who  
9 shall furnish such information as is available from the party interrogated.

10 ~~(a)~~(2) Interrogatories may, without leave of the ~~Industrial~~ Commission, be served upon any party after  
11 the filing of a Form ~~48~~, 18 Notice of Accident to Employer and Claim of Employee,  
12 Representative, or Dependent, Form ~~48B~~, 18B Claim by Employee, Representative, or Dependent  
13 for Benefits for Lung Disease, or Form ~~33~~, 33 Request that Claim be Assigned for Hearing, or  
14 after the acceptance of a claim.

15 ~~(b)~~(3) Each interrogatory shall be answered separately and ~~fully~~ in writing under oath, unless it is  
16 objected to, in which event the reasons for objection shall be stated in lieu of an answer. The  
17 answers ~~are to~~ shall be signed by the person making them and the objections shall be signed by the  
18 party making them. The party on whom the interrogatories have been served shall serve a copy of  
19 the ~~answers,~~ answers and objections, if any, within 30 days after service of the interrogatories.  
20 The parties may stipulate to an extension of time to respond to the interrogatories. A motion to  
21 extend the time to respond shall represent that an attempt to reach agreement with the opposing  
22 party to informally extend the time for response has been unsuccessful and the opposing parties'  
23 position or that there has been a reasonable attempt to contact the opposing party to ascertain its  
24 position.

25 ~~(c)~~(4) If there is an objection to or other failure to answer an interrogatory, the party submitting the  
26 interrogatories may move the ~~Industrial~~ Commission for an order compelling answer. If the  
27 ~~Industrial~~ Commission orders answer to an interrogatory within a time certain and no answer is  
28 made or the objection is still lodged, the ~~Industrial~~ Commission may issue an order with  
29 appropriate sanctions, ~~including but not limited to the sanctions specified in Rule 37 of the North~~  
30 ~~Carolina Rules of Civil Procedure.~~

31 ~~(2)~~(5) Interrogatories and requests for production of documents shall may relate to matters ~~which that~~ are  
32 not privileged, ~~which that~~ are relevant to an issue ~~presently~~ in dispute, or ~~which that~~ the requesting  
33 party reasonably believes may later be disputed. ~~Signature-~~The signature of a party or attorney  
34 serving interrogatories or requests for production of documents constitutes a certificate by such  
35 person that he or she has personally read each of the interrogatories and requests for production of  
36 documents, that no such interrogatory or request for production of documents will oppress a party  
37 or cause any unnecessary expense or delay, that the information requested is not known or equally



1 available to the requesting party, and that the interrogatory or requested document relates to an  
2 issue presently in dispute or ~~which that~~ the requesting party reasonably believes may later be in  
3 dispute. A party may serve an interrogatory, however, to obtain verification of facts relating to an  
4 issue presently in dispute. Answers to interrogatories may be used to the extent permitted by ~~the~~  
5 ~~rules of evidence.~~ Chapter 8C of the North Carolina General Statutes.

6 ~~(6)~~ Up to the time a matter is calendared for a hearing, parties may serve requests for production of  
7 documents without leave of the Commission.

8 ~~(3)(7)~~ Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may  
9 be used only upon motion ~~and approval by the Industrial Commission~~ or by agreement of the  
10 parties. The Commission shall approve the motion in the interests of justice or to promote judicial  
11 economy.

12 ~~(4)~~ ~~Notices of depositions, discovery requests and responses pertinent to a pending motion, responses~~  
13 ~~to discovery following a motion or order to compel, and responses shall be filed with the~~  
14 ~~Commission, as well as served on the opposing party. Otherwise, discovery requests and~~  
15 ~~responses, including interrogatories and requests for production of documents shall not be filed~~  
16 ~~with the Commission.~~

17 ~~(8)~~ Discovery requests and responses, including interrogatories and requests for production of  
18 documents, shall not be filed with the Commission, except for the following:

19 (a) notices of depositions;

20 (b) discovery requests and responses pertinent to a pending motion;

21 (c) responses to discovery following a motion or order to compel; and

22 (d) post-hearing discovery requests and responses.

23 The above listed documents shall be filed with the Commission, as well as served on the opposing  
24 party.

25 ~~(5)(9)~~ Sanctions ~~may~~ shall be imposed under this Rule for failure to comply with a Commission order  
26 compelling discovery. A motion by a party or its attorney to compel discovery under this Rule and  
27 ~~4 NCAC 10A .607~~ Rule .0607 of this Subchapter shall represent that informal means of resolving  
28 the discovery dispute have been attempted in good faith and state ~~briefly~~ the opposing parties'  
29 position or that there has been a reasonable attempt to contact the opposing party and ascertain its  
30 position.

31  
32 *History Note:* Authority G.S. 97-80(a); 97-80(f);

33 *Eff. January 1, 1990;*

34 *Amended Eff. April 1, 2014; January 1, 2011; June 1, 2000.*

1 04 NCAC 10A .0608 is amended as follows:

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3 **04 NCAC 10A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM**

4 (a) ~~At the outset of taking a statement,~~ Upon the request of the employer or his agent to take a written or a recorded  
5 statement, the employer or his agent shall advise the employee that the statement ~~is being taken to~~ may be used ~~in~~  
6 ~~part~~ to determine whether the claim will be paid or denied. Any plaintiff who gives his or her employer, ~~or~~ its  
7 carrier, or any agent either a written or recorded statement of the facts and circumstances surrounding his or her  
8 injury shall be furnished a copy of ~~such~~ the statement within 45 days after request. Further, any plaintiff who shall  
9 give a written or recorded statement of the facts and circumstances surrounding his injury shall, without request, be  
10 furnished a copy no less than 45 days from the filing of a Form 33 *Request that Claim be Assigned for Hearing*.  
11 ~~Such~~ The copy shall be furnished at the expense of the person, firm or corporation at whose direction the statement  
12 was taken.

13 (b) If any person, firm or corporation unreasonably fails to comply with this ~~rule,~~ Rule, then an order may be  
14 entered by a Commissioner or Deputy Commissioner prohibiting that person, firm or corporation, or its  
15 representative, from introducing the statement into evidence or using any part of ~~it,~~ the statement.

16

17 *History Note: Authority G.S. 97-80(a);*  
18 *Eff. January 1, 1990;*  
19 *Amended Eff. April 1, 2014; June 1, 2000.*

1 04 NCAC 10A .0609A is amended as follows:

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3 **04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS**

4 ~~(a) Expedited Medical Motions:~~

5 ~~(1) Medical motions pursuant to N.C. Gen. Stat. §97-25 brought before the Office of the Executive~~  
6 ~~Secretary for an administrative ruling shall comply with applicable provisions of Rule 609 and~~  
7 ~~shall be submitted electronically to medicalmotions@ic.nc.gov, unless electronic submission is~~  
8 ~~unavailable to the party.~~

9 ~~(2) A party may file with the Deputy Commissioner Section a request for an administrative ruling on~~  
10 ~~a medical motion. A party, also, may appeal an Order from the Executive Secretary's Office on an~~  
11 ~~Expedited Medical Motion by giving notice of appeal to the Dockets Department within 15 days~~  
12 ~~of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant~~  
13 ~~to Rule 703(1). The Motion shall contain a designation as an administrative "Expedited Medical~~  
14 ~~Motion", documentation in support of the request, including the most recent medical record/s and~~  
15 ~~a representation that informal means of resolving the issue have been attempted in good faith, and~~  
16 ~~the opposing party's position, if known.~~

17 ~~(A) A Pre Trial Conference will be held immediately to clarify the issues. Parties are~~  
18 ~~encouraged to consent to a review of the contested issues by electronic mail submission~~  
19 ~~of only relevant medical records and opinion letters.~~

20 ~~(B) If depositions are deemed necessary by the Deputy Commissioner, only a brief period for~~  
21 ~~taking the same will be allowed. Preparation of the transcript will be expedited and will~~  
22 ~~initially be at the expense of defendants. Requests for independent medical examinations~~  
23 ~~may be denied unless there is a demonstrated need for the evaluation.~~

24 ~~(C) Written arguments and briefs shall be limited in length, and are to be filed within five~~  
25 ~~days after the record is closed.~~

26 ~~(3) A party may appeal an Order by a Deputy Commissioner on an Expedited Medical Motion by~~  
27 ~~giving notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of~~  
28 ~~the ruling on a Motion to Reconsider the Order filed pursuant to Rule 703(1).~~

29 ~~(A) A letter expressing an intent to appeal a Deputy Commissioner's Order on an Expedited~~  
30 ~~Medical Motion shall be considered notice of appeal to the Full Commission, provided~~  
31 ~~that it clearly specifies the Order from which appeal is taken.~~

32 ~~(B) After receipt of notice of appeal, the appeal will be acknowledged by the Dockets~~  
33 ~~Department within three (3) days by sending an appropriate Order under the name of the~~  
34 ~~Chair of the Panel to which the appeal is assigned. The parties may be permitted to file~~  
35 ~~briefs on an abbreviated schedule in the discretion of the panel chair. The panel chair will~~  
36 ~~also determine if oral arguments are to be by telephone, in person, or waived. All~~

1 ~~correspondence, briefs, or motions related to the appeal shall be addressed to the panel~~  
2 ~~chair with a copy to the law clerk of the panel chair.~~

3 ~~(b) Emergency Medical Motions:~~

4 ~~(1) Motions requesting emergency medical relief administratively shall contain the following:~~

5 ~~(A) A boldface, or otherwise emphasized, designation as "Emergency Medical Motion."~~

6 ~~(B) An explanation of the need for a shortened time period for review, including any hardship~~  
7 ~~that warrants immediate attention/action by the Commission.~~

8 ~~(C) A statement of the time sensitive nature of the request, with specificity.~~

9 ~~(D) Detailed dates and times related to the issue raised and to the date a ruling is requested.~~

10 ~~(E) Documentation in support of the request, including the most recent medical records.~~

11 ~~(F) A representation that informal means of resolving the issue have been attempted in good~~  
12 ~~faith, and the opposing party's position, if known.~~

13 ~~(2) A party may file an Emergency Medical Motion with the Executive Secretary's Office, the Chief~~  
14 ~~Deputy Commissioner, or the Office of the Chair. A proposed Order shall be provided with the~~  
15 ~~motion. The non-moving party(ies) will be advised regarding any time allowed for response and~~  
16 ~~may be advised whether informal telephonic oral argument is necessary.~~

17 ~~(3) Emergency Medical Motions and responses thereto shall be submitted electronically, unless~~  
18 ~~electronic submission is unavailable to the party.~~

19 ~~(A) Emergency Medical Motions and responses thereto filed with the Executive Secretary's~~  
20 ~~Office shall be submitted to [medicalmotions@ic.nc.gov](mailto:medicalmotions@ic.nc.gov).~~

21 ~~(B) Emergency Medical Motions filed with the Chief Deputy Commissioner shall be~~  
22 ~~submitted electronically directly to the Chief Deputy Commissioner and his/her legal~~  
23 ~~assistant.~~

24 ~~(C) Emergency Medical Motions filed with the Chair of the Commission shall be submitted~~  
25 ~~electronically to the Chair, his/her legal assistant, and his/her law clerk.~~

26 (a) Medical motions brought pursuant to G.S. 97-25, and responses thereto, shall be brought before the Office of the  
27 Chief Deputy Commissioner and shall be submitted electronically to [medicalmotions@ic.nc.gov](mailto:medicalmotions@ic.nc.gov). Motions and  
28 responses shall be submitted simultaneously to the Commission and the opposing party or opposing party's counsel,  
29 if any.

30 (b) Once notification has been received by the parties that a medical motion has been assigned to a Deputy  
31 Commissioner, subsequent filings and communication shall be submitted directly to the Deputy Commissioner  
32 assigned.

33 (c) Upon receipt of a medical motion, carriers, third-party administrators and employers who are not represented  
34 shall immediately assign counsel and send notification of counsel's name, email address, telephone number and fax  
35 number to [medicalmotions@ic.nc.gov](mailto:medicalmotions@ic.nc.gov). An attorney who is retained by a party in any proceeding before the  
36 Commission shall also file a Notice of Representation with the Docket Director at [dockets@ic.nc.gov](mailto:dockets@ic.nc.gov) with a copy of  
37 the notice sent to all other counsel and all other unrepresented parties involved in the proceeding.

1 (d) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall  
2 contain the following:

- 3 (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25;
- 4 (2) the claimant's name and, if unrepresented, claimant's email address, telephone number, and fax  
5 number. If represented, the name, email address, telephone number and fax number of claimant's  
6 counsel;
- 7 (3) the employer's name and employer code;
- 8 (4) the carrier or third party administrator's name, carrier code, email address, telephone number and  
9 fax number;
- 10 (5) the adjuster's name, email address, telephone number and fax number if counsel for the  
11 employer/carrier has not been retained;
- 12 (6) the counsel for employer/carrier's name, email address, telephone number and fax number;
- 13 (7) a statement of the treatment or relief requested;
- 14 (8) a statement of the medical diagnosis of claimant and the treatment recommendation and name of  
15 the health care provider that is the basis for the motion;
- 16 (9) a statement as to whether the claim has been admitted on a Form 60, Form 63, Form 21 or is  
17 subject to a prior Commission Opinion and Award or Order finding compensability;
- 18 (10) a statement of the time-sensitive nature of the request;
- 19 (11) an explanation of opinions known and in the possession of the employee of additional medical or  
20 other relevant experts, independent medical examiners, and second opinion examiners;
- 21 (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall  
22 specify whether the plaintiff has made a prior written request to the defendants for the  
23 examination, as well as the date of the request and the date of the denial, if any;
- 24 (13) a representation that informal means of resolving the issue have been attempted in good faith, and  
25 the opposing party's position, if known; and
- 26 (14) a proposed Order.

27 (e) Motions requesting emergency medical relief shall contain the following:

- 28 (1) a boldface or otherwise emphasized, designation as "Emergency Medical Motion";
- 29 (2) the claimant's name and, if unrepresented, claimant's email address, telephone number, and fax  
30 number. If represented, the name, email address, telephone number and fax number of claimant's  
31 counsel;
- 32 (3) the employer's name and employer code;
- 33 (4) the carrier or third party administrator's name, carrier code, email address, telephone number and  
34 fax number;
- 35 (5) the adjuster's name, email address, telephone number and fax number if counsel for the  
36 employer/carrier has not been retained;
- 37 (6) the counsel for employer/carrier's name, email address, telephone number and fax number;

1 (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider  
2 that requires emergency attention;

3 (8) a statement of the need for a shortened time period for review, including relevant dates and the  
4 potential for adverse consequences if the recommended treatment is not provided emergently;

5 (9) an explanation of opinions known and in the possession of the employee of additional medical or  
6 other relevant experts, independent medical examiner, and second opinion examiners;

7 (10) a representation that informal means of resolving the issue have been attempted in good faith, and  
8 the opposing party's position, if known; and

9 (11) a proposed Order.

10 (f) The parties shall receive notice of the date and time of an initial informal telephonic conference to be conducted  
11 by a Deputy Commissioner to determine whether the motion warrants an expedited or emergency hearing and to  
12 clarify the issues. During the initial informal telephonic conference each party shall be afforded an opportunity to  
13 state its position and submit documentary evidence. Prior to the initial informal telephonic conference, the parties  
14 shall submit a brief medical chronology and procedural history of three pages or less, the relevant Form 60, Form  
15 63, Form 21 or Commission Opinion and Award, and relevant medical information including medical records.

16 (g) At or prior to the initial informal telephonic conference, the parties may consent to a review of the contested  
17 issues by electronic mail submission of only relevant medical records and opinion letters.

18 (h) Depositions deemed necessary by the Deputy Commissioner shall be taken on the Deputy Commissioner's order  
19 within 35 days of the date the motion is filed. Transcripts of depositions shall be submitted electronically to the  
20 Commission within 40 days of the date of the filing of the motion.

21 (i) At the initial informal telephonic conference, each party shall notify the Commission and the other party as to  
22 whether a second informal telephonic conference is necessary. This second informal telephonic conference does not  
23 extend the time for resolution of the Motion.

24 (j) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of  
25 any time allowed for response and whether informal telephonic oral argument is necessary.

26 (k) A party may appeal a Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 by giving  
27 notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of the ruling on a Motion to  
28 Reconsider the Order filed pursuant to Rule .0703(b) of this Subchapter. A letter expressing an intent to appeal a  
29 Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 shall be considered notice of appeal to  
30 the Full Commission, provided that the letter specifies the Order from which appeal is taken. After receipt of notice  
31 of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order under the  
32 name of the Chair of the Panel to which the appeal is assigned. The parties may file briefs on an abbreviated  
33 schedule when necessary for a determination of the issues. The panel chair shall also determine if oral arguments  
34 are to be by telephone, in person, or waived. All correspondence, briefs, or motions related to the appeal shall be  
35 addressed to the panel chair with a copy to the law clerk of the panel chair.

36 (l) The Commission will accept the filing of documents by non-electronic methods if electronic transmission is  
37 unavailable to the party.

1

2 *History Note:* Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a);

3 *Eff. January 1, 2011;*

4 *Amended Eff. April 1, 2014.*

1 04 NCAC 10A .0612 is adopted as follows:

2

3 **04 NCAC 10A .0612 DEPOSITIONS**

4 ~~(a) When additional testimony is necessary to the disposition of a case, a Commissioner or Deputy Commissioner may~~  
5 ~~order the deposition of witnesses to be taken on or before a day certain not to exceed 60 days from the date of the ruling;~~  
6 ~~provided, the time allowed may be enlarged for good cause shown. The costs of such depositions shall be borne by the~~  
7 ~~defendants for those medical witnesses who examined plaintiff at defendants' expense, in those instances in which~~  
8 ~~defendants are requesting the depositions, and in any other case which, in the discretion of the Commissioner or Deputy~~  
9 ~~Commissioner, it is deemed appropriate.~~

10 ~~(b) In cases where a party, or an attorney for either party, refuses to stipulate medical reports and the case must be reset~~  
11 ~~or depositions ordered for testimony of medical witnesses, a Commissioner or Deputy Commissioner may in his~~  
12 ~~discretion assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who~~  
13 ~~refused the stipulation.~~

14 ~~(c) Except under unusual circumstances, all lay evidence must be offered at the initial hearing. Lay evidence can only be~~  
15 ~~offered after the initial hearing by order of a Commissioner or Deputy Commissioner. The costs of obtaining lay~~  
16 ~~testimony by deposition shall be borne by the party making the request unless otherwise ordered by the Commission.~~

17 (a) Prior to a hearing before a Deputy Commissioner, the parties shall confer to determine the methods by which medical  
18 evidence, if any, will be submitted. In doing so, absent a well-grounded objection, the parties shall stipulate to the  
19 admission of all relevant medical records, reports, and forms, as well as opinion letters from the employee's health care  
20 providers with the goal of minimizing the use of post-hearing depositions. When a Pre-Trial Agreement is required by  
21 the Commission, the parties shall certify in the Pre-Trial Agreement that the parties have conferred to determine the  
22 methods by which medical evidence, if any, will be submitted, and the parties shall state whether there is any  
23 disagreement about the stipulation of medical evidence. The parties shall state in the Pre-Trial Agreement all experts to  
24 be deposed post-hearing.

25 (b) When medical or other expert testimony is requested by the parties for the disposition of a case, a Deputy  
26 Commissioner or Commissioner may order expert depositions to be taken on or before a day certain not to exceed 60  
27 days from the date of the hearing; provided, however, the time allowed may be enlarged or shortened in the interests of  
28 justice or to promote judicial economy, or where required by the Act. The costs of up to two post-hearing depositions  
29 selected by the employee of health care providers who evaluated or treated the employee shall be borne by the employer.  
30 The employer shall also bear the costs of a deposition of a second opinion doctor selected jointly by the parties or  
31 ordered by the Commission pursuant to G.S. 97-25. The employee shall designate the health care providers the employee  
32 will depose at employer's expense in the Pre-Trial Agreement. The parties may notice depositions of additional experts,  
33 and the costs thereof shall be borne by the party noticing the depositions; provided, however, if a ruling favorable to the  
34 employee is rendered and is not timely appealed by the employer, or the employer's appeal is dismissed or withdrawn,  
35 then the employer shall reimburse the employee the costs of such additional expert depositions. Notwithstanding this  
36 provision, the parties may come to a separate agreement regarding reimbursement of deposition costs, which shall be  
37 submitted to the Commission for approval. Provided further, in (i) claims pursuant to G.S. 97-29(d) and (ii) cases



1 involving exceptional, unique, or complex injuries or diseases, the Commission may allow additional depositions of  
2 experts to be taken at the employer's expense, when requested by the employee and when necessary to address the issues  
3 in dispute, in which case the employee shall state, and the Commission shall consider, at a minimum, the following  
4 factors when determining whether or not the employer shall bear the costs of such depositions:

- 5 (1) The name and profession of the proposed deponent;
- 6 (2) If the proposed deponent is a health care provider, whether the health care provider evaluated,  
7 diagnosed or treated the employee;
- 8 (3) The issue to which the testimony is material, relevant and necessary;
- 9 (4) The availability of alternate methods for submitting the evidence and the efforts made to utilize  
10 alternate methods;
- 11 (5) The severity or complexity of the employee's condition;
- 12 (6) The number and complexity of the issues in dispute;
- 13 (7) Whether the testimony is likely to be duplicative of other evidence; and
- 14 (8) The opposing party's position on the request.

15 The term "costs" as used in this rule shall mean the expert's fee as approved by the Commission for the deposition,  
16 including the expert's time preparing for the deposition, if applicable, and shall include fees associated with the  
17 production and delivery of a transcript of the deposition to the Commission, including the court reporter's appearance  
18 fee, but shall not include costs for a party to obtain his or her own copy of the deposition transcript, or attorney's fees  
19 associated with the deposition, unless so ordered by the Commission pursuant to G.S. 97-88.1.

20 (c) If the claimant is unrepresented at the time of a full evidentiary hearing before a Deputy Commissioner, the  
21 Commission shall determine the best method for presenting medical evidence, if necessary, and the party responsible for  
22 bearing associated costs.

23 (d) If a party unreasonably refuses to stipulate to relevant medical evidence, and as a result, the case is reset or  
24 depositions are ordered for testimony of medical or expert witnesses, a Deputy Commissioner or Commissioner may  
25 assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the  
26 stipulation, pursuant to G.S. 97-88.1.

27 (e) All evidence and witnesses other than those tendered as an expert witness shall be offered at the hearing before the  
28 Deputy Commissioner. Non-expert evidence may be offered after the hearing before the Deputy Commissioner by order  
29 of a Deputy Commissioner or Commissioner. The costs of obtaining non-expert testimony by deposition shall be borne  
30 by the party making the request unless otherwise ordered by the Commission in the interests of justice or to promote  
31 judicial economy.

32  
33 *History Note:* Authority G.S. 97-80(a); 97-88; 97-88.1;  
34 Eff. June 1, 1990;  
35 Amended Eff. April 1, 2014; June 1, 2000.

1 04 NCAC 10A .0613 is amended as follows:

2

3 **04 NCAC 10A .0613 EXPERT WITNESSES AND FEES**

4 ~~(a) Dismissals:~~

5 (1) ~~———— No claim filed under the Workers' Compensation Act shall be dismissed without prejudice at plaintiff's~~  
6 ~~instance except upon order of the Industrial Commission and upon such terms and conditions as justice~~  
7 ~~requires; provided, however, that no voluntary dismissal shall be granted after the record in a case is~~  
8 ~~closed.~~

9 (2) ~~———— Unless otherwise ordered by the Industrial Commission, a plaintiff shall have one year from the date of~~  
10 ~~the Order of Voluntary Dismissal to refile his claim.~~

11 (3) ~~———— Upon proper notice and an opportunity to be heard, any claim may be dismissed with or without~~  
12 ~~prejudice by the Industrial Commission on its own motion or by motion of any party for failure to~~  
13 ~~prosecute or to comply with these Rules or any Order of the Commission.~~

14 ~~(b) Removals:~~

15 (1) ~~———— A claim may be removed from the hearing docket by motion of the party requesting the hearing or by~~  
16 ~~the Industrial Commission upon its own motion.~~

17 (2) ~~———— Upon settlement of a case or approval of a form agreement, the parties shall submit a request for~~  
18 ~~removal and/or a dismissal and proposed Order.~~

19 (3) ~~———— A removed case may be reinstated by motion of either party; provided that cases wherein the issues~~  
20 ~~have materially changed since the Order of Removal or where the motion to reinstate is filed more than~~  
21 ~~one year after the Order of Removal, a Form 33 Request for Hearing will be required.~~

22 (4) ~~———— When a plaintiff has not requested a hearing within two years of the filing of an Order of Removal~~  
23 ~~requested by the plaintiff or necessitated by the plaintiff's conduct, and not pursued the claim, upon~~  
24 ~~proper notice and an opportunity to be heard, any claim may be dismissed with prejudice by the~~  
25 ~~Industrial Commission, in its discretion, on its own motion or by motion of any party.~~

26 (a) The parties shall file with the Deputy Commissioner or Commission within 15 days following the hearing, a list  
27 identifying all expert witnesses to be deposed and the deposition dates unless otherwise extended by the Commission in  
28 the interests of justice and judicial economy.

29 (b) Within 10 days after the deposition of each expert, the party that noticed the deposition shall submit to the Deputy  
30 Commissioner or Commissioner, via email, a request to approve the costs related to the expert deposition. In these  
31 requests, the party shall provide to the Deputy Commissioner or Commissioner, in a cover letter along with the invoice (if  
32 available), the following:

33 (1) the name of the expert and the expert's practice;

34 (2) the expert's fax number;

35 (3) the expert's area of specialty and board certifications, if any;

36 (4) the length of the deposition;

- 1           (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with  
2           parties' counsel;  
3           (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an  
4           exceptional, unique, or complex injury or disease;  
5           (7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be  
6           deposed at employer's expense; and  
7           (8) the party initially responsible for payment of the deposition fee pursuant to 04 NCAC 10A .0612.

8 At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice  
9 name and fax number under the "Appearances" section. The proposed order shall also reflect the party initially  
10 responsible for payment of the deposition fee pursuant to 04 NCAC 10A .0612.

11 (c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this rule  
12 shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for  
13 the deposition, if applicable, and shall include fees associated with the production and delivery of a transcript of the  
14 deposition to the Commission, including the court reporter's appearance fee, but shall not include costs for a party to  
15 obtain his or her own copy of the deposition transcript, or attorney's fees associated with the deposition, unless so  
16 ordered by the Commission pursuant to G.S. 97-88.1

17 (d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an  
18 amount equal to 10 percent being added to the fee ordered to be paid to the expert.

19 (e) A proposed fee for cancellation of a deposition within five days of scheduled deposition may be submitted to the  
20 Deputy Commissioner for consideration and approval if in the interest of justice and judicial economy.

21 (f) This rule applies to all expert fees for depositions; provided, however, either party may elect to reimburse a retained  
22 expert that did not treat or examine the employee the difference between the fee awarded by the Commission and the  
23 contractual fee of the expert.

24  
25 *History Note: Authority G.S. 97-80(a); G.S. 97-80(d); 97-80(f);*  
26 *Eff. January 1, 1990;*  
27 *Amended Eff. April 1, 2014; January 1, 2011; June 1, 2000.*

1 04 NCAC 10A .0701 is amended as follows:

2  
3 **SECTION .0700 - APPEALS**  
4

5 **04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION**

6 ~~(a) A letter expressing an intent to appeal shall be considered notice of appeal to the Full Commission within the~~  
7 ~~meaning of N.C. Gen. Stat. §97-85, provided that it clearly specifies the Order or Opinion and Award from which appeal~~  
8 ~~is taken.~~

9 ~~(b) After receipt of notice of appeal, the Industrial Commission will supply to the appellant a Form 44 Application for~~  
10 ~~Review upon which appellant must state the grounds for the appeal. The grounds must be stated with particularity,~~  
11 ~~including the specific errors allegedly committed by the Commissioner or Deputy Commissioner and, when applicable,~~  
12 ~~the pages in the transcript on which the alleged errors are recorded. Failure to state with particularity the grounds for~~  
13 ~~appeal shall result in abandonment of such grounds, as provided in paragraph (3). Appellant's completed Form 44 and~~  
14 ~~brief must be filed and served within 25 days of appellant's receipt of the transcript or receipt of notice that there will be~~  
15 ~~no transcript, unless the Industrial Commission, in its discretion, waives the use of the Form 44. The time for filing a~~  
16 ~~notice of appeal from the decision of a Deputy Commissioner under these rules shall be tolled until a timely motion to~~  
17 ~~reconsider or to amend the decision has been ruled upon by the Deputy Commissioner.~~

18 ~~(c) Particular grounds for appeal not set forth in the application for review shall be deemed abandoned, and argument~~  
19 ~~thereon shall not be heard before the Full Commission.~~

20 ~~(d) Appellant's Form 44 and brief in support of his grounds for appeal shall be filed in triplicate with the Industrial~~  
21 ~~Commission, with a certificate indicating service on appellee by mail or in person, within 25 days after receipt of the~~  
22 ~~transcript, or receipt of notice that there will be no transcript. Thereafter, appellee shall have 25 days from service of~~  
23 ~~appellant's brief within which to file a reply brief in triplicate with the Industrial Commission, with written statement of~~  
24 ~~service of copy by mail or in person on appellant. When an appellant fails to file a brief, appellee shall file his brief~~  
25 ~~within 25 days after appellant's time for filing brief has expired. A party who fails to file a brief will not be allowed oral~~  
26 ~~argument before the Full Commission. If both parties appeal, they shall each file an appellant's and appellee's brief on~~  
27 ~~the schedule set forth herein. If the matter has not been calendared for hearing, any party may file with the Docket~~  
28 ~~Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative~~  
29 ~~extensions of time exceed 30 days.~~

30 ~~(e) After notice of appeal has been given to the Full Commission, any motions related to the issues before the Full~~  
31 ~~Commission shall be filed in triplicate with the Full Commission, with service on the other parties.~~

32 ~~(f) No new evidence will be presented to or heard by the Full Commission unless the Commission in its discretion so~~  
33 ~~permits.~~

34 ~~(g) Cases should be cited by North Carolina Reports, and, preferably, to Southeastern Reports. Counsel shall not discuss~~  
35 ~~matters outside the record, assert personal opinions or relate personal experiences, or attribute unworthy acts or motives~~  
36 ~~to opposing counsel.~~

1 ~~(h) The Industrial Commission or any one of the parties with permission of the Industrial Commission may waive oral~~  
2 ~~argument before the Full Commission. In the event of such waiver, the Full Commission will file a decision, based on the~~  
3 ~~record, assignments of error and briefs.~~

4 ~~(i) A plaintiff appealing the amount of a disfigurement award shall personally appear before the Full Commission to~~  
5 ~~permit the Full Commission to view the disfigurement.~~

6 ~~(j) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit shall apply to the~~  
7 ~~length of attachments. Briefs shall be prepared entirely using a 12 point font, shall be double spaced, and shall be~~  
8 ~~prepared with non justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When~~  
9 ~~quoting or paraphrasing testimony or other evidence in the transcript of the evidence, a parenthetic entry in the text, to~~  
10 ~~include the exact page number location within the transcript of the evidence of the information being referenced shall be~~  
11 ~~placed at the end of the sentence citing the information [Example: (T.p.38)]. When quoting or paraphrasing testimony or~~  
12 ~~other evidence in the transcript of a deposition, a parenthetic entry in the text to include the name of the person deposed~~  
13 ~~and exact page number location within the transcript of the deposition of the information being referenced shall be placed~~  
14 ~~at the end of the sentence citing the information. [Example: (Smith p.15)].~~

15 (a) Application for review shall be made to the Commission within 15 days from the date when notice of the Deputy  
16 Commissioner's Opinion and Award shall have been given. A letter expressing a request for review is considered an  
17 application for review to the Full Commission within the meaning of G.S. 97-85, provided that the letter specifies the  
18 Order or Opinion and Award from which appeal is taken.

19 (b) After receipt of a request for review, the Commission shall acknowledge the request for review by letter. The  
20 Commission shall prepare the official transcript and exhibits and provide them along with a Form 44 *Application for*  
21 *Review* to the parties involved in the appeal at no charge within 30 days of the acknowledgement letter. The official  
22 transcript and exhibits and a Form 44 *Application for Review* shall be provided to the parties electronically, where  
23 possible. In such cases, the Commission shall send an e-mail to the parties containing a link to the secure FTP site where  
24 the official transcript and exhibits can be downloaded. The e-mail shall also provide instructions for the submission of  
25 the parties' acknowledgement of receipt of the Form 44 *Application for Review* and the official transcript and exhibits to  
26 the Commission. The Commission shall save a copy of the parties' acknowledgement e-mails in the file for the claim to  
27 serve as record of the parties' electronic receipt of the Form 44 *Application for Review* and the official transcript and  
28 exhibits. In cases where it is not possible to provide a party with the official transcript and exhibits electronically, the  
29 Commission shall provide the official transcript and exhibits and a Form 44 *Application for Review* via certified U.S.  
30 Mail, with return receipt requested. The Commission shall save a copy of the return receipt to serve as record of the  
31 party's receipt of the official transcript and exhibits and Form 44 *Application for Review*.

32 (c) A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed with the Deputy  
33 Commissioner within 15 days of receipt of notice of the award with a copy to the Docket Director. The time for filing a  
34 request for review from the decision of a Deputy Commissioner under the rules in this Subchapter shall be tolled until a  
35 motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner. However, if either  
36 party files a letter expressing a request for review as set forth in subsection (a) above, jurisdiction shall be immediately  
37 transferred to the Full Commission, and the Docket Director shall notify the Deputy Commissioner. Upon transfer of

1 jurisdiction to the Full Commission, any party who had a pending motion to reconsider or amend the decision of the  
2 Deputy Commissioner may file a motion with the Chairman of the Commission requesting remand to the Deputy  
3 Commissioner with whom the motion was pending. Within the Full Commission's discretion, the matter may be so  
4 remanded. Upon the Deputy Commissioner's ruling on the motion to reconsider or amend the decision, either party may  
5 thereafter file a letter expressing a request for review of the Deputy Commissioner's decision as set forth in subsection (a)  
6 above.

7 (d) The appellant shall submit a Form 44 *Application for Review* upon which appellant shall state the grounds for the  
8 review. The grounds shall be stated with particularity, including the errors allegedly committed by the Commissioner or  
9 Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged errors are recorded.  
10 Grounds for review not set forth in the Form 44 *Application for Review* are deemed abandoned, and argument thereon  
11 shall not be heard before the Full Commission.

12 (e) The appellant shall file the Form 44 *Application for Review* and brief in support of the grounds for review with the  
13 Commission with a certificate of service on the appellee within 25 days after receipt of the transcript or receipt of notice  
14 that there will be no transcript. The appellee shall have 25 days from service of appellant's brief to file a responsive brief  
15 with the Commission. Appellee's brief must include a certificate of service on the appellant. When an appellant fails to  
16 file a brief, an appellee shall file its brief within 25 days after the appellant's time for filing the Form 44 *Application for*  
17 *Review* and appellant's brief has expired. A party who fails to file a brief shall not participate in oral argument before the  
18 Full Commission. If multiple parties request review, each party shall file an appellant's brief and appellee's brief on the  
19 schedule set forth in this Paragraph. If the matter has not been calendared for hearing, any party may file with the Docket  
20 Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative  
21 extensions of time exceed 30 days.

22 (f) After a request for review has been given to the Full Commission, any motions related to the issues for review before  
23 the Full Commission shall be filed with the Full Commission, with service on the other parties. Motions related to the  
24 issues for review including motions for new trial, to supplement the record, including, but not limited to, documents from  
25 offers of proof, or to take additional evidence, filed during the pendency of a request for review to the Full Commission  
26 shall be argued before the Full Commission at the time of the hearing of the request for review, except motions related to  
27 the appellate record. The Full Commission, for good cause shown, may rule on such motions prior to oral argument.

28 (g) Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North  
29 Carolina Reporter, and when possible, to the Southeastern Reporter. If no reporter citation is available at the time a brief  
30 is filed or if an unpublished decision is referenced in the brief, the party citing to the case shall attach a copy of the case  
31 to its brief. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences,  
32 or attribute wrongful acts or motives to opposing counsel or members of the Commission.

33 (h) Upon the request of a party or on its own motion, the Commission may waive oral argument in the interests of justice  
34 or to promote judicial economy. In the event of such waiver, the Full Commission shall file an award, based on the  
35 record and briefs.

36 (i) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length  
37 of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-

1 justified right margins. Each page of the brief shall be numbered at the bottom of the page. When a party quotes or  
2 paraphrases testimony or other evidence from the appellate record in the party's brief, the party shall include, at the end of  
3 the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetical entry that designates the  
4 source of the quoted or paraphrased material and the page number location within the applicable source. The party shall  
5 use "T" to refer to the transcript of hearing testimony, "Ex" for exhibit, and "p" for page number. For example, if a party  
6 quotes or paraphrases material located in the hearing transcript on page 11, the party shall use the following format "(T p  
7 11)", and if a party quotes or paraphrases material located in an exhibit on page 12, the party shall use the following  
8 format "(Ex p 12)". When a party quotes or paraphrases testimony in the transcript of a deposition in the party's brief, the  
9 party shall include the last name of the deponent and the page on which such testimony is located. For example, if a party  
10 quotes or paraphrases the testimony of John Smith, located on page 11 of such deposition, the party shall use the  
11 following format "(Smith p 11)".

12 (j) An employee appealing the amount of a disfigurement award shall personally appear before the Full Commission to  
13 permit the Full Commission to view the disfigurement.

14  
15 *History Note: Authority G.S. 97-80(a); 97-85;*  
16 *Eff. January 1, 1990;*  
17 *Amended Eff. April 1, 2014; January 1, 2011; August 1, 2006; June 1, 2000.*

1 04 NCAC 10A .0704 is adopted as follows:

2  
3 **04 NCAC 10A .0704 REMAND FROM THE APPELLATE COURTS**

4 (a) When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or  
5 without a brief, to the Full Commission setting forth its position on the actions or proceedings, including evidentiary  
6 hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of  
7 the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission  
8 decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored  
9 the decision is no longer a member of the Industrial Commission. The deadline to submit the statement to the  
10 Commission shall be stayed automatically upon a party filing a petition for discretionary review or rehearing to the  
11 appellate courts.

12 (b) Application may be made in the first instance to the Supreme Court for a writ of supersedeas to stay the  
13 execution or enforcement of a judgment, order, or other determination mandated by the Court of Appeals when a  
14 notice of appeal of right or a petition for discretionary review has been or will be timely filed, or a petition for  
15 review by certiorari, mandamus, or prohibition has been filed to obtain review of the decision of the Court of  
16 Appeals.

17  
18 *History Note: Authority G.S. 97-80(a); 97-86;*  
19 *Eff. April 1, 2014.*



1 04 NCAC 10A .0801 is amended as follows:  
2

3 **SECTION .0800 – RULES OF THE COMMISSION**  
4

5 **04 NCAC 10A .0801 WAIVER OF RULES**

6 ~~In the interest of justice, these rules may be waived by the Industrial Commission. The rights of any unrepresented~~  
7 ~~plaintiff will be given special consideration in this regard, to the end that a plaintiff without an attorney shall not be~~  
8 ~~prejudiced by mere failure to strictly comply with any one of these rules.~~

9 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the  
10 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a  
11 case pending before the Commission upon written application of a party or upon its own initiative only if the  
12 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the  
13 waiver are:

- 14 (1) the necessity of a waiver;  
15 (2) the party's responsibility for the conditions creating the need for a waiver;  
16 (3) the party's prior requests for a waiver;  
17 (4) the precedential value of such a waiver;  
18 (5) notice to and opposition by the opposing parties; and  
19 (6) the harm to the party if the waiver is not granted.  
20

21 *History Note: Authority G.S. 97-80(a);*  
22 *Eff. January 1, 1990;*  
23 *Amended Eff. April 1, 2014.*  
24

1 04 NCAC 10B .0501 is amended as follows:

2

3

**SECTION .0500 – RULES OF THE COMMISSION**

4

**04 NCAC 10B .0501 WAIVER OF RULES**

6 ~~In the interest of justice, these rules may be waived by a Commissioner, Deputy Commissioner, or the Full~~  
7 ~~Commission.~~

8 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the  
9 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a  
10 case pending before the Commission upon written application of a party or upon its own initiative only if the  
11 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the  
12 waiver are:

- 13 (1) the necessity of a waiver;  
14 (2) the party's responsibility for the conditions creating the need for a waiver;  
15 (3) the party's prior requests for a waiver;  
16 (4) the precedential value of such a waiver;  
17 (5) notice to and opposition by the opposing parties; and  
18 (6) the harm to the party if the waiver is not granted.

19

20 *History Note: Authority G.S. 143-291; 143-300;*  
21 *Eff. January 1, 1989;*  
22 *Amended Eff. April 1, 2014; May 1, 2000.*

04 NCAC 10C .0103 is amended as follows:

#### 4 NCAC 10C .0103 DEFINITIONS

As used in this Subchapter:

(a)(1) ~~RP~~ "Rehabilitation professional" means a medical case ~~managers and manager, a coordinators~~ coordinator of medical rehabilitation ~~services services, and/or~~ or a vocational rehabilitation professional providing vocational rehabilitation services, including ~~but not limited to,~~ state, private, or carrier based, whether on site, telephonic, or in or out of state. ~~RPs do not include direct care providers, e.g., physical therapists, occupational therapists, or speech therapists.~~ Physical therapists, occupational therapists, speech therapists, and other direct care providers are not rehabilitation professionals under the Rules in this Subchapter.

~~(b) The "parties" are the worker, the worker's attorney, the employer, the workers' compensation carrier (including claims administrator, third party administrator), and the employer or carrier's attorney(s).~~

~~(c) "Physician" means medical doctor, chiropractor, other physician, and, where the context requires, other health care providers.~~

~~(d)(2)~~ "Medical rehabilitation" ~~refers to~~ means the planning and coordination of health care ~~services.~~ services by a medical case manager or coordinator, with the goal of assisting an injured worker to be restored ~~The goal of medical rehabilitation is to assist in the restoration of injured workers as~~ nearly as possible to the workers' worker's pre-injury level of physical function. Medical case management ~~may include but is not limited to~~ includes:

(a) case assessment; assessment, including a personal interview with the injured worker;

(b) development, implementation and coordination of a care plan with health care ~~providers~~ providers, and with the worker-worker, and his or her family;

(c) evaluation of treatment results;

(d) planning for community ~~re-entry; re-entry and return to work work; with the employer of injury and/or and~~

(e) referral for further vocational rehabilitation services.

~~(e)(3) "Vocational Rehabilitation"~~ "Vocational rehabilitation" ~~refers to~~ means the delivery and coordination of services under an individualized written plan, with the goal of assisting the injured workers-worker to return to suitable ~~employment. employment or participate in education or retraining, as defined by subsection (5) of this Rule or applicable statute.~~

~~(1) Specific vocational rehabilitation services may include, but are not limited to: vocational assessment, vocational exploration, counseling, job analysis, job modification, job development and placement, labor market survey, vocational or psychometric testing, analysis of transferable skills, work adjustment counseling, job seeking skills training, on the job training and retraining, and follow up after re-employment.~~

1 ~~(2) The vocational assessment is based on the RP's evaluation of the worker's social, medical, and~~  
2 ~~vocational standing, along with other information significant to employment potential and on a~~  
3 ~~face to face interview between the worker and the RP, to determine whether the worker can~~  
4 ~~benefit from vocational rehabilitation services, and, if so, to identify the specific type and~~  
5 ~~sequence of appropriate services. It should include an evaluation of the worker's expectations in~~  
6 ~~the rehabilitation process, an evaluation of any specific requests by the worker for medical~~  
7 ~~treatment or vocational training, and a statement of the RP's conclusion regarding the worker's~~  
8 ~~need for rehabilitation services, benefits expected from services, and a description of the proposed~~  
9 ~~rehabilitation plan.~~

10 ~~(3) Job placement activities may be commenced after completion of a vocational assessment and~~  
11 ~~formulation of an individualized plan for vocational services which specifies its goals and the~~  
12 ~~priority for return to work options in each case. Placement shall only be directed toward~~  
13 ~~prospective employers offering the opportunity for suitable employment, as defined herein.~~

14 ~~(f)(4) "Return to work" means placement of the injured worker into suitable employment, as defined~~  
15 ~~herein by Item (5) of this Rule or applicable statute. Return to work options generally should be~~  
16 ~~considered in the following priority:~~

17 ~~(1) Current job, current employer;~~

18 ~~(2) New job, current employer;~~

19 ~~(3) On the job training, current employer;~~

20 ~~(4) New job, new employer;~~

21 ~~(5) On the job training, new employer;~~

22 ~~(6) Formal vocational training to prepare worker for job with current or new employer.~~

23 ~~(7) Due to the high risk of small business failure, self employment should be considered only when its~~  
24 ~~feasibility is documented with reference to worker's aptitudes and training, adequate~~  
25 ~~capitalization, and market conditions.~~

26 ~~(g)(5) "Suitable employment" For claims arising before June 24, 2011, "suitable employment" means~~  
27 ~~employment in the local labor market or self-employment which that is reasonably attainable and~~  
28 ~~which that offers an opportunity to restore the worker as soon as possible and as nearly as~~  
29 ~~practicable to pre-injury wage, while giving due consideration to the worker's qualifications (age,~~  
30 ~~education, work experience, physical and mental capacities), impairment, vocational interests, and~~  
31 ~~aptitudes. No one factor shall be considered solely in determining suitable employment. For~~  
32 ~~claims arising on or after June 24, 2011, the statutory definition of "suitable employment," G.S.~~  
33 ~~97-2(22), applies.~~

34 ~~(6) "Conditional rehabilitation professional" means a rehabilitation professional who has not met the~~  
35 ~~requirements for qualified rehabilitation professionals under Paragraph (d) of Rule .0105 of this~~  
36 ~~Subchapter and who desires to provide services as a rehabilitation professional in cases subject to~~  
37 ~~the Rules in this Subchapter.~~

1

2 *History Note:* Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-80;

3 *Eff. January 1, 1996;*

4 *Recodified from 4 NCAC 10C .0101, Eff. April 17, 2000;*

5 *Amended Eff. April 1, 2014; June 1, 2000.*

1 04 NCAC 10C .0108 is amended as follows:

2  
3 **04 NCAC 10C .0108 INTERACTION WITH PHYSICIANS**

4 (a) At the initial visit with a physician the RP-rehabilitation professional shall provide ~~professional~~ identification in  
5 the form of a company identification or business card and ~~shall~~ explain the RP's rehabilitation professional's role in  
6 the case.

7 (b) In all cases, the RP-rehabilitation professional shall advise the worker that ~~he or she~~ the worker has the right to a  
8 private examination by the ~~medical health care~~ provider outside of the presence of the RP-rehabilitation professional.  
9 If the worker prefers, he or she may request that the RP-rehabilitation professional accompany him or her during the  
10 examination. However, if the worker or the worker's attorney notifies the RP-rehabilitation professional in writing  
11 that the worker desires a private examination, no subsequent waiver of that right shall be effective unless the waiver  
12 is ~~revoked~~ made in writing by the worker or, if represented, by the worker's attorney.

13 (c) If the RP-rehabilitation professional ~~wishes~~ needs to have a ~~an~~ personal ~~in-person~~ conference with the physician  
14 following an examination, the RP-rehabilitation professional ~~should~~ shall reserve with the physician sufficient  
15 appointment time for ~~a~~ the conference. The worker ~~must~~ shall be offered the opportunity to attend ~~this~~ the  
16 conference with the physician. If the worker or the physician does not consent to a joint conference, or if in the  
17 physician's opinion it is medically contraindicated for the worker to participate in the conference, the RP  
18 rehabilitation professional ~~will~~ shall note this in his or her report, ~~and~~ may ~~in such case~~ communicate directly with  
19 the physician, and shall report the substance of the communication.

20 (d) When the RP-rehabilitation professional determines that it is necessary to communicate with a physician other  
21 than at a joint meeting, the RP-rehabilitation professional shall first notify the injured worker, or ~~his/her~~ his or her  
22 attorney if represented, of the RP's rehabilitation professional's intent to communicate and the reasons therefore.  
23 The RP-rehabilitation professional ~~need~~ is not required to obtain the injured worker's or his or her attorney's prior  
24 consent ~~for the following types of communication: if:~~

- 25 (1) The communication is limited to scheduling issues or requests for time-sensitive medical records;
- 26 (2) A medical emergency is involved;
- 27 (3) The injured worker's health or medical treatment would either be adversely affected by a delay or  
28 benefited by immediate action;
- 29 (4) The communication is limited to advising the physician of the employer or carrier approval for  
30 recommended testing or treatment;
- 31 (5) The injured worker or attorney has consented to ~~such the communications~~ communications;  
32 ~~through a valid, current authorization;~~
- 33 (6) The communication is initiated by the physician; or
- 34 (7) The injured worker failed to show up for a scheduled appointment or arrived at a time other than  
35 the scheduled appointment time.

36 ~~Whenever an RP-~~When a rehabilitation professional communicates with a physician without the prior consent or  
37 presence of the injured worker, the RP-rehabilitation professional must ~~promptly~~ document the reasons for and the

1 substance of the communication and ~~promptly report such~~the reasons and substance to the injured worker or his or  
2 her attorney, if represented, pursuant to Rule ~~VI-.0106~~ of this Subchapter.

3 ~~(e) The RP may assist in scheduling second opinions requested by the treating physician, as well as supporting~~  
4 ~~treatment. In such case, the worker shall receive at least 10 calendar days notice of an appointment for a second~~  
5 ~~opinion unless otherwise agreed by the parties or required by statute.~~

6 ~~(f) The RP may assist in obtaining from the treating physician an opinion as to the degree of permanent partial~~  
7 ~~impairment retained by the worker at maximum medical improvement. The decision to obtain a second physician's~~  
8 ~~opinion on the degree of impairment is not within the practice of rehabilitation. However, if requested by the party~~  
9 ~~who desires a second opinion, the RP may assemble information, schedule, coordinate, and, with the worker's~~  
10 ~~consent, attend the appointment with that physician.~~

11 ~~(g) If a party requests a second opinion or an independent medical examination, the RP's involvement is limited to~~  
12 ~~assembling and forwarding medical records and information, and scheduling, coordinating, and, with the worker's~~  
13 ~~consent, attending the appointment with that physician.~~

14 (e) The following requirements apply to interactions regarding impairment ratings, independent medical  
15 examinations, second opinions or consults:

16 (1) When a party or health care provider requests a consult, second opinion, or independent medical  
17 examination that is authorized or ordered, the rehabilitation professional may assemble and  
18 forward medical records and information, schedule and coordinate an appointment, and, if the  
19 worker consents, have a joint meeting with the health care provider and the worker after a private  
20 exam, if requested.

21 (2) When any such exam is requested by the carrier, the worker shall receive at least 10 calendar days'  
22 notice of the appointment unless the parties agree otherwise or unless otherwise required by  
23 statute.

24 ~~(h)(f)~~ The RP-rehabilitation professional shall simultaneously send copies to the parties copies of all written  
25 communications to with medical-health care providers, providers and shall accurately and completely record and  
26 report all oral communications.

27  
28 *History Note: Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80;*  
29 *Eff. January 1, 1996;*  
30 *Amended Eff. April 1, 2014; June 1, 2000.*

04 NCAC 10C .0109 is amended as follows:

**4 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK**

(a) When performing the vocational assessment and formulating and drafting the individualized written rehabilitation plan for the employee required by G.S. 97-32.2(c), the vocational rehabilitation professional shall follow G.S. 97-32.2.

(b) Job placement activities may not be commenced until after a vocational assessment and an individualized written rehabilitation plan for vocational rehabilitation services specifying the goals and the priority for return-to-work options have been completed in the case in accordance with G.S. 97-32.2. Job placement activities shall be directed only toward prospective employers offering the opportunity for suitable employment, as defined by Item (5) of Rule .0103 of this Subchapter or by applicable statute.

(c) Return-to-work options shall be considered in the following order of priority:

(1) current job, current employer;

(2) new job, current employer;

(3) on-the-job training, current employer;

(4) new job, new employer;

(5) on-the-job training, new employer;

(6) formal education or vocational training to prepare worker for job with current or new employer;

and

(7) self-employment, only when its feasibility is documented with reference to the employee's aptitudes and training, adequate capitalization, and market conditions.

(d) When an employee requests retraining or education as permitted in G.S. 97-32.2(a), the vocational rehabilitation professional shall provide a written assessment of the employee's request that includes an evaluation of:

(1) the retraining or education requested;

(2) the availability, location, cost, and identity of providers of the requested retraining or education;

(3) the likely duration until completion of the requested retraining or education and the likely class schedules, class attendance requirements, and out-of-class time required for homework and study;

(4) the current or projected availability of employment upon completion; and

(5) the anticipated pay range for employment upon completion.

~~(a)(e) The RP rehabilitation professional shall obtain work restrictions from the medical health care provider work restrictions which that fairly address the demands of any proposed employment. If ordered by a physician, the RP rehabilitation professional should shall obtain schedule an appointment with a third party provider to evaluate an injured worker's functional capacity Evaluation (FCE) or physical capacity \_apacity, or impairments to work. E valuation (PCE). Any FCE or PCE obtained should measure the worker's capacities and impairments.~~

~~(b)(f) The RP [Rehabilitation Professional] rehabilitation professional shall refer the worker only to opportunities for suitable employment, as defined herein by Item (5) of Rule .0103 of this Subchapter or by applicable statute.~~



1 ~~(e)~~(g) If the RP, rehabilitation professional intends to utilize written or videotaped job descriptions in the return-to-  
2 work process, the RP, rehabilitation professional shall provide a copy of the description to all parties for review  
3 before the job description is provided to the doctor. The worker or the worker's attorney shall have seven business  
4 days from ~~the~~ mailing of the ~~description, description~~ to notify the RP rehabilitation professional, all parties, and the  
5 physician of any objections or amendments ~~to the job description thereto~~. The job description and the objections or  
6 amendments, if any, shall be submitted to the physician simultaneously. This process ~~may~~ shall be expedited ~~on~~  
7 ~~occasions~~ when job availability is critical. This waiting period does not apply if the worker or the worker's attorney  
8 has pre-approved the job description.

9 ~~(d)~~(h) In preparing written job descriptions, the RP rehabilitation professional shall utilize standards including  
10 ~~recognized standards which may include but not be limited to the~~ Dictionary of Occupational Titles ~~and/or and~~ the  
11 Handbook for Analyzing Jobs published by the ~~U.S.~~ United States Department of ~~Labor.~~ Labor, ~~which are~~  
12 ~~recognized as national standard references for use in vocational rehabilitation.~~

13 ~~(e)~~ ~~In identifying proposed employment for the injured worker, the RP should consider the worker's transportation~~  
14 ~~requirements.~~

15 ~~(f)~~ (i) The rehabilitation professional may conduct follow-up after job placement ~~may be carried out~~ to verify the  
16 appropriateness of the job placement.

17 ~~(g)~~(j) The RP, rehabilitation professional shall not initiate or continue placement activities ~~which~~ that do not appear  
18 reasonably likely to result in placement of the injured worker in suitable employment. The RP, rehabilitation  
19 professional shall report to the parties when efforts to place the worker in suitable employment do not appear  
20 reasonably likely to result in placement of the injured worker in suitable employment.

21  
22 *History Note:* Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-2(22);  
23 Eff. January 1, 1996;  
24 Amended Eff. April 1, 2014; June 1, 2000.

1 04 NCAC 10C .0201 is adopted as follows:  
2

3 **SECTION .0200 - RULES OF THE COMMISSION**  
4

5 **4 NCAC 10C .0201 WAIVER OF RULES**

6 In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the  
7 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a  
8 case pending before the Commission upon written application of a party or upon its own initiative only if the  
9 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the  
10 waiver are:

- 11 (1) the necessity of a waiver;
- 12 (2) the party's responsibility for the conditions creating the need for a waiver;
- 13 (3) the party's prior requests for a waiver;
- 14 (4) the precedential value of such a waiver;
- 15 (5) notice to and opposition by the opposing parties; and
- 16 (6) the harm to the party if the waiver is not granted.

17  
18 *History Note: Authority G.S. 97-25.4; 97-80;*  
19 *Eff. April 1, 2014.*

1 04 NCAC 10D .0110 is amended as follows:

2

3 **4 NCAC 10D .0110 WAIVER OF RULES**

4 ~~For good cause, and in its discretion, subject to statutory requirements, the Commission may waive adherence to any~~  
5 ~~of these Rules.~~ In the interests of justice or to promote judicial economy, the Commission may, except as otherwise  
6 provided by the Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this  
7 Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative  
8 only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to  
9 grant the waiver are:

- 10 (1) the necessity of a waiver;  
11 (2) the party's responsibility for the conditions creating the need for a waiver;  
12 (3) the party's prior requests for a waiver;  
13 (4) the precedential value of such a waiver;  
14 (5) notice to and opposition by the opposing parties; and  
15 (6) the harm to the party if the waiver is not granted.

16

17 *History Note:* Authority G.S. 97-25.2; 97-80(a);

18 Eff. January 1, 1996;

19 Amended Eff. April 1, 2014.

1 04 NCAC 10E .0103 is adopted as follows:

2  
3 **4 NCAC 10E .0103           ADMISSION OF OUT-OF STATE ATTORNEYS TO APPEAR BEFORE THE**  
4 **COMMISSION**

5 (a) Attorneys residing in and licensed to practice law in another state who seek to be admitted to practice before the  
6 Commission to represent a client in a particular claim pursuant to N.C. Gen. Stat. § 84-4.1 may file a motion with  
7 the Commission that complies with the requirements of N.C. Gen. Stat. § 84-4.1. If the *pro hac vice* motion is filed  
8 in a case involving a stipulated Opinion and Award regarding a death claim, the motion shall be filed with the Chief  
9 Deputy Commissioner. The North Carolina attorney with whom the out-of-state attorney associates pursuant to  
10 N.C. Gen. Stat. § 84-4.1(5) may also file the motion.

11 (b) The motion shall be filed with the Executive Secretary of the Commission except under the following  
12 circumstances:

13       (1) If the pertinent claim is set for hearing before or pending decision by a Deputy Commissioner or  
14       the Full Commission, the motion shall be filed with the Deputy Commissioner or chair of the Full  
15       Commission panel, respectively.

16       (2) If the motion is filed in a case involving a form application regarding a death claim, the motion  
17       shall be filed with the Director of Claims Administration.

18       (3) If the motion is filed in a case involving a stipulated Opinion and Award regarding a death claim,  
19       the motion shall be filed with the Chief Deputy Commissioner.

20 (c) A proposed Order that includes the facsimile numbers for all counsel of record shall be provided with the  
21 motion.

22 (d) Following the payment of the fees to the North Carolina State Bar and General Court of Justice as required by  
23 N.C. Gen. Stat. § 84-4.1, the out-of-state attorney or the associated North Carolina attorney shall file a statement  
24 with the Executive Secretary documenting payment of said fees and the submission of any *pro hac vice* admission  
25 registration statement required by the North Carolina State Bar.

26  
27 *History Note: Authority G.S. 84-4.1; 97-80(a);*  
28 *Eff. April 1, 2014.*

1 04 NCAC 10E .0104 is adopted as follows:

2  
3 **4 NCAC 10E .0104 SECURE LEAVE PERIODS FOR ATTORNEYS**

4 (a) In order to secure for the parties to actions and proceedings pending before the Industrial Commission, and to  
5 the public at large, the heightened level of professionalism that an attorney is able to provide when the attorney  
6 enjoys periods of time that are free from the urgent demands of professional responsibility and to enhance the  
7 overall quality of the attorney's personal and family life, any attorney may from time to time designate and enjoy  
8 one or more secure leave periods each year as provided in this Rule.

9 (b) During any calendar year, an attorney's secure leave periods pursuant to this Rule shall not exceed, in the  
10 aggregate, three calendar weeks.

11 (c) To request a secure leave period an attorney shall file a written request, by letter or motion, containing the  
12 information required by subsection (d) of this Rule with the Office of the Chair within the time provided in  
13 subsection (e). Upon such filing, the Chair shall review the request and, if appropriate, issue a letter allowing the  
14 requested secure leave period, and the attorney shall not be required to appear at any trial, hearing, deposition, or  
15 other proceeding before the Commission during that secure leave period.

16 (d) The request shall contain the following information:

17 (1) the attorney's name, address, telephone number and state bar number,

18 (2) the date(s) for which secure leave is being requested,

19 (3) the dates of all other secure leave periods during the current calendar year that have previously  
20 been designated by the attorney pursuant to this Rule,

21 (4) A statement that the secure leave period is not being designated for the purpose of delaying,  
22 hindering or interfering with the timely disposition of any matter in any pending action or  
23 proceeding, and

24 (5) a statement that no action or proceeding in which the attorney has entered an appearance has been  
25 scheduled, tentatively set, or noticed for trial, hearing, deposition or other proceeding during the  
26 designated secure leave period.

27 (e) To be allowed, the request shall be filed:

28 (1) no later than ninety (90) days before the beginning of the secure leave period, and

29 (2) before any trial, hearing, deposition or other matter has been regularly scheduled, peremptorily set  
30 or noticed for a time during the designated secure leave period.

31 An untimely request will be automatically denied by letter. In the event that a party has been denied secure leave  
32 because the request was not timely filed and there are extraordinary circumstances, the attorney may file a motion  
33 requesting an exception. If the case has been scheduled for hearing before a Deputy Commissioner, the motion shall  
34 be addressed to the Deputy Commissioner. If the matter is scheduled for hearing before the Full Commission, the  
35 motion shall be addressed to the chair of the panel before which the hearing will be held. In all other cases, the  
36 motion should be directed to the Office of the Chair.

1 (f) If, after a secure leave period has been allowed pursuant to this Rule, any trial, hearing, deposition, or other  
2 proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the  
3 Deputy Commissioner or chair of the Full Commission panel before which the matter was calendared or set, and  
4 serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon  
5 receipt, the pertinent proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.  
6 (g) If, after a secure leave period has been allowed pursuant to this Rule, any deposition is noticed for a time during  
7 the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing  
8 the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time  
9 that is not within the attorney's secure leave period.  
10 (h) Nothing in this Rule shall limit the inherent power of the Commission to reschedule a case to allow an attorney  
11 to enjoy a leave during a period that has not been allowed pursuant to this Rule, but there shall be no entitlement to  
12 any such leave.

13

14 *History Note: Authority G.S. 97-80(a);*  
15 *Eff. April 1, 2014.*

1 04 NCAC 10E .0201 is adopted as follows:  
2

3 **SECTION .0200 – FEES**  
4

5 **4 NCAC 10E .0201 DOCUMENT AND RECORD FEES**

6 (a) The fees in this Rule apply to all subject areas within the authority of the Commission.

7 (b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter  
8 132 of the North Carolina General Statutes, copies of documents and audio recordings of Commission hearings are  
9 available at the “actual cost” as defined by G.S. 132-6.2(b). The Commission shall provide the “actual cost” on the  
10 Commission’s website. Certification of documents in the Commission’s claim files is available upon request at a  
11 cost of one dollar (\$1.00) per certification in addition to the “actual cost” for the copies of the documents.  
12 Electronic copy certification is not available.

13 (c) Documents shall be sent via certified mail upon request at the actual cost established by the United States Postal  
14 Service.

15 (d) North Carolina sales tax shall be added if applicable.

16  
17 *History Note: Authority G.S. 7A-305; 97-73; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300;*  
18 *Eff. April 1, 2014.*

1 4 NCAC 10E .0202 is adopted as follows:

2  
3 **4 NCAC 10E .0202 HEARING COSTS OR FEES**

4 (a) The following hearing costs or fees apply to all subject areas within the authority of the Commission:

5 (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged  
6 after the hearing has been held;

7 (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a  
8 specific hearing date, to be paid by the requesting party or parties;

9 (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case  
10 is calendared for a specific hearing date;

11 (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged  
12 after the hearing has been held;

13 (5) one hundred twenty dollars (\$120.00) if an appeal or request for review to the Full Commission is  
14 withdrawn or for the dismissal of an appeal or request for review due to the failure to prosecute or  
15 perfect the appeal or request for review after the appeal or request for review is scheduled for a  
16 specific hearing date;

17 In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise,  
18 except as specified in subsection (2) above.

19 (b) The Commission may waive fees set forth in subsection (a) of this rule, or assess such fees against a party or  
20 parties pursuant to G.S. 97-88.1 if the Commission determines that the hearing has been brought, prosecuted, or  
21 defended without reasonable ground.

22 (c) Failure to pay fees or costs assessed by the Commission may result in penalties. The Commission may issue a  
23 notice and order to show cause as to why a fee or cost assessed by the Commission has not been paid.

24  
25 *History Note:* Authority G.S. 7A-305; 97-73; 97-80; 143-291.1; 143-291.2; 143-300;  
26 *Eff. April 1, 2014.*



1 04 NCAC 10E .0203 is adopted as follows:

2  
3 **04 NCAC 10E .0203 FEES SET BY THE COMMISSION**

4 (a) In workers' compensation cases, the Commission sets the following fees:

5 (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be  
6 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). Unless the  
7 parties agree otherwise, the employer(s) or the employer's carrier(s) shall pay such fee in full  
8 when submitting the agreement to the Commission, and shall then be entitled to a credit for the  
9 employee's 50% share of such fee against settlement proceeds;

10 (2) three hundred dollars (\$300.00) for the processing of a Form 21 *Agreement for Compensation for*  
11 *Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A  
12 *Employer's Admission of Employee's Right to Permanent Partial Disability* to be paid by the  
13 employee and the employer in equal shares. The employer shall pay such fee in full when  
14 submitting the agreement to the Commission. Unless the parties agree otherwise or the award  
15 totals \$3,000 or less, the employer shall be entitled to a credit for the employee's 50% share of  
16 such fee against the award;

17 (3) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be  
18 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). The  
19 employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from  
20 the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's  
21 share of such fees when the case is concluded from benefits that may be determined to be due to  
22 the employee, and the employer(s) or the employer's carrier(s) may withhold funds from any  
23 award for this purpose.

24 (4) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the  
25 General Court of Justice for the processing of a Form 331 *Intervenor's Request that Claim be*  
26 *Assigned for Hearing*, to be paid by the intervenor.

27 (b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the  
28 Superior Court division of the General Court of Justice.

29  
30 *History Note: Authority G.S. 97-10.2; 97-17; 97-18.2; 97-26(i); 97-73; 97-80; 143-291.2; 143-300;*  
31 *Eff. April 1, 2014.*

1 4 NCAC 10E .0301 is adopted as follows:  
2

3 **SECTION .0300 – RULES OF THE COMMISSION**  
4

5 **4 NCAC 10E .0301 WAIVER OF RULES**

6 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the  
7 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a  
8 case pending before the Commission upon written application of a party or upon its own initiative only if the  
9 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the  
10 waiver are:

- 11 (1) the necessity of a waiver;  
12 (2) the party's responsibility for the conditions creating the need for a waiver;  
13 (3) the party's prior requests for a waiver;  
14 (4) the precedential value of such a waiver;  
15 (5) notice to and opposition by the opposing parties; and  
16 (6) the harm to the party if the waiver is not granted.

17  
18 *History Note:* Authority G.S. 97-25.2; 97-25.4; 97-73; 97-80; 130A-425(d); 143-166.4; 143-296; 143-300;  
19 *Eff. April 1, 2014.*

1 04 NCAC 10G .0104A is amended as follows:

2  
3 **04 NCAC 10G .0104A FOREIGN LANGUAGE INTERPRETERS**

4 ~~(a) Services of Foreign Language Interpreters Required Unless Waived. When a person who does not speak or~~  
5 ~~understand the English language is required to attend a mediation conference, the person shall be assisted by a~~  
6 ~~qualified foreign language interpreter unless the right to an interpreter is waived by both parties.~~

7 ~~(b) Qualifications of Interpreters. To qualify as a foreign language interpreter, a person must possess sufficient~~  
8 ~~experience and education, or a combination of experience and education, speaking, and understanding English and~~  
9 ~~the foreign language to be interpreted, to qualify as an expert witness pursuant to N.C. Gen. Stat. §8C-1, Rule 702.~~

10 ~~(c) Notice to Industrial Commission and Opposing Party of Need for Interpreter. Any party who is unable to speak~~  
11 ~~or understand English shall so notify the Industrial Commission and the opposing party, in writing, not less than 21~~  
12 ~~days prior to the date of the mediation conference. The notice shall state with specificity the language(s) that must be~~  
13 ~~interpreted.~~

14 ~~(d) Designation of Interpreter. Upon notice of the need for an interpreter, the employer or insurer shall retain a~~  
15 ~~qualified, disinterested interpreter, either agreed upon by the parties or approved by the Industrial Commission, to~~  
16 ~~assist at the mediation conference.~~

17 ~~(e) Interpreter Fees. The interpreter's fee shall constitute a cost as contemplated by N.C. Gen. Stat. §97-80. A~~  
18 ~~qualified interpreter who appears at a mediation conference shall be entitled to payment of the fee agreed upon by~~  
19 ~~the interpreter and employer or insurer that retained the interpreter. Except in cases where a claim for compensation~~  
20 ~~has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer or insurer shall~~  
21 ~~be paid by the employer or insurer. Where it is ultimately determined by the Commission that the request for an~~  
22 ~~interpreter was unfounded, attendant costs may be assessed against the movant.~~

23 ~~(f) Interpreter Ethics. Foreign language interpreters shall abide by the code of ethical conduct for court interpreters~~  
24 ~~promulgated by the North Carolina Administrative Office of the Courts and adopted by the Industrial Commission~~  
25 ~~and shall interpret, as word for word as is practicable, without editing, commenting, or summarizing, testimony or~~  
26 ~~other communications.~~

27 (a) Any party who is unable to speak or understand English shall so notify the Commission, the mediator, and the  
28 opposing party(ies) in writing, not less than 21 days prior to the date of the mediated settlement conference. The  
29 notice shall contain the party's primary language and how the party plans to communicate in English during the  
30 mediation.

31 (b) If either party shall request assistance by a qualified foreign language interpreter for a party who does not speak  
32 or understand the English language, the party requesting the assistance of the foreign language interpreter shall bear  
33 the costs.

34 (c) If the certified mediator, in his or her discretion, notifies the parties of the need for a qualified foreign language  
35 interpreter, the parties shall retain a disinterested interpreter, who possesses the qualifications listed in paragraph (d)  
36 of this Rule, to assist at the mediated settlement conference. The fee of the foreign language interpreter and any

1 postponement fees necessitated by the need for a qualified foreign language interpreter shall be shared by the parties  
2 unless the parties agree otherwise.

3 (d) A qualified foreign language interpreter shall possess sufficient experience and education, or a combination of  
4 experience and education, in speaking and understanding English and the foreign language to be interpreted, to  
5 qualify as an expert witness pursuant to G.S. 8C-1, Rule 702.

6 (e) Qualified foreign language interpreters shall abide by the Code of Conduct and Ethics of Foreign Language  
7 Interpreters and Translators, contained in Part 4 of *Policies and Best Practices for the Use of Foreign Language*  
8 *Interpreting and Translating Services in the North Carolina Court System* and promulgated by the North Carolina  
9 Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing,  
10 commenting, or summarizing, testimony or other communications. The Code of Conduct and Ethics of Foreign  
11 Language Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and  
12 editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's  
13 website, <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the  
14 offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina,  
15 between the hours of 8:00 a.m. and 5:00 p.m.

16  
17 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300;*

18 *Eff. January 1, 2011;*

19 *Amended Eff. April 1, 2014.*

1 04 NCAC 10G .0107 is amended as follows:

2  
3 **04 NCAC 10G .0107 COMPENSATION OF THE MEDIATOR**

4 ~~(a) By Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed upon~~  
5 ~~between the parties and the mediator.~~

6 ~~(b) By Commission Order. When the mediator is appointed by the Commission, the mediator's compensation shall~~  
7 ~~be as follows:~~

8 ~~(1) Conference Fees. The mediator shall be paid by the parties at the rate of \$150.00 per hour for mediation~~  
9 ~~services at the conference.~~

10 ~~(2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee of~~  
11 ~~\$150.00, unless otherwise ordered by the Commission. The mediator's administrative fee shall be paid in full~~  
12 ~~unless, within 10 days after the date that the mediator has been appointed, written notice is given to the mediator and~~  
13 ~~the Dispute Resolution Coordinator that the issues for which a request for hearing had been filed have been fully~~  
14 ~~resolved or the hearing request has been withdrawn.~~

15 ~~(3) Postponement Fees. As used herein, the term "postpone" shall mean to reschedule or otherwise not proceed~~  
16 ~~with a scheduled mediation conference after that conference has been scheduled to convene on a specific date. After~~  
17 ~~a conference is scheduled to convene on a specific date it may not be postponed without the requesting party first~~  
18 ~~notifying all other parties concerning the grounds for the requested postponement, or without the consent and~~  
19 ~~approval of the mediator or the Dispute Resolution Coordinator. If a mediation conference is postponed without~~  
20 ~~good cause, the mediator shall be paid a postponement fee unless, upon application of the party or parties charged~~  
21 ~~with the fee, the fee is waived by the Commission. Unless the Commission otherwise orders, the postponement fee~~  
22 ~~shall be \$300.00 if the mediation conference is postponed within seven calendar days of the scheduled conference,~~  
23 ~~and \$150.00 if the mediation conference is postponed more than seven calendar days prior to a scheduled~~  
24 ~~conference. Postponement fees shall be allocated in equal shares to the party or parties requesting the postponement~~  
25 ~~unless otherwise ordered by the Commission.~~

26 ~~(4) The settlement of a case prior to the scheduled date for mediation shall be good cause for a postponement~~  
27 ~~provided that the mediator was notified of the settlement immediately after it was reached and the mediator received~~  
28 ~~notice of the settlement at least fourteen (14) calendar days prior to the date scheduled for mediation.~~

29 ~~(c) Payment by Parties. Payment shall be due upon completion of the conference; provided, that the State shall be~~  
30 ~~billed at the conference and pay within 30 days of receipt of the billing, and insurance companies or carriers whose~~  
31 ~~written procedures do not provide for payment of the mediator at the conference may pay within 15 days of the~~  
32 ~~conference. Unless otherwise agreed to by the parties or ordered by the Commission, costs of the mediated~~  
33 ~~settlement conference shall be allocated to the parties, as follows: one share by plaintiff(s); one share by the~~  
34 ~~workers' compensation defendant employer or its insurer, or if more than one employer or carrier is involved, or if~~  
35 ~~there is a dispute between employer(s) or carrier(s), one share by each separately represented entity; one share by~~  
36 ~~participating third party tort defendants or their carrier, or if there are conflicting interests among them, one share~~  
37 ~~from each such defendant or group of defendants having shared interests; and, one share by the defendant State~~

1 ~~agency in a State Tort Claims Act case. Parties obligated to pay a share of the costs shall be responsible for equal~~  
2 ~~shares; provided, however, that in workers' compensation claims the defendant shall pay the plaintiff's share of~~  
3 ~~mediation, postponement, and substitution fees, as well as its own. Unless the Dispute Resolution Coordinator enters~~  
4 ~~an Order allocating such fees to a particular party, the fees may be taxed as other costs by the Commission. The~~  
5 ~~defendant shall be reimbursed for the plaintiff's share of such fees when the case is concluded from benefits that~~  
6 ~~may be determined to be due to the plaintiff, and the defendant may withhold funds from any award for this purpose.~~

7 (a) By Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed upon  
8 between the parties and the mediator.

9 (b) By Commission Order. When the mediator is appointed by the Commission, the mediator's compensation shall  
10 be as follows:

11 (1) Conference Fees. The mediator shall be paid by the parties at the rate of one hundred fifty dollars  
12 (\$150.00) per hour for mediation services provided at the mediated settlement conference.

13 (2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee  
14 of one hundred fifty dollars (\$150.00). The mediator's administrative fee shall be paid in full  
15 unless, within 10 days after the mediator has been appointed, written notice is given to the  
16 mediator and to the Dispute Resolution Coordinator that the issues for which a request for hearing  
17 was filed have been fully resolved or that the hearing request has been withdrawn.

18 (3) Postponement Fees. As used in this Subchapter, the term "postpone" means to reschedule or  
19 otherwise not proceed with a scheduled mediated settlement conference after the conference has  
20 been scheduled to convene on a specific date. After a conference is scheduled to convene on a  
21 specific date, the conference may not be postponed unless the requesting party notifies all other  
22 parties of the grounds for the requested postponement and obtains the consent and approval of the  
23 mediator or the Dispute Resolution Coordinator. If the conference is postponed without good  
24 cause, the mediator shall be paid a postponement fee. The postponement fee shall be three  
25 hundred dollars (\$300.00) if the conference is postponed within seven calendar days of the  
26 scheduled date, and one hundred fifty dollars (\$150.00) if the conference is postponed more than  
27 seven calendar days prior to the scheduled date. Unless otherwise ordered by the Commission in  
28 the interests of justice, postponement fees shall be allocated in equal shares to the party or parties  
29 requesting the postponement. As used in this Rule, "good cause" shall mean that the reason for  
30 the postponement involves a situation over which the party seeking the postponement has no  
31 control, including but not limited to, a party or attorney's illness, a death in a party or attorney's  
32 family, a demand by a judge that a party or attorney for a party appear in court, or inclement  
33 weather such that travel is prohibitive.

34 (4) The settlement of a case prior to the scheduled date of the mediated settlement conference shall be  
35 good cause to cancel the mediation without the approval of the mediator or the Dispute Resolution  
36 Coordinator. The parties shall notify the mediator of any cancellation due to settlement. The  
37 mediator may charge a cancellation fee of one hundred fifty dollars (\$150.00) if notified of the

1 cancellation within fourteen days of the scheduled date, or three hundred dollars (\$300.00) if  
2 notified within seven days of the scheduled date.

3 (c) Payment by Parties. Payment is due upon completion of the mediated settlement conference; provided, that the  
4 State shall be billed at the conference and shall pay within 30 days of receipt of the bill, and insurance companies or  
5 carriers whose written procedures do not provide for payment of the mediator at the conference may pay within 15  
6 days of the conference. Unless otherwise agreed to by the parties or ordered by the Commission due to a party or  
7 parties violating a Rule in this Subchapter, the costs of the conference shall be allocated to the parties, as follows:

8 (1) one share by plaintiff(s);

9 (2) one share by the workers' compensation defendant-employer or its insurer, or if more than one  
10 employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share  
11 by each separately represented entity;

12 (3) one share by participating third-party tort defendants or their carrier, or if there are conflicting  
13 interests among them, one share from each defendant or group of defendants having shared  
14 interests; and

15 (4) one share by the defendant State agency in a Tort Claims Act case.

16 Parties obligated to pay a share of the costs are responsible for equal shares; provided, however, that in workers'  
17 compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and substitution fees,  
18 as well as defendant's own share. If plaintiff requests postponement of the mediated settlement conference,  
19 defendants shall be entitled to a credit for the postponement fee.

20 (d) Unless the Dispute Resolution Coordinator enters an order allocating such fees to a particular party due to the  
21 party violating a Rule in this Subchapter, the fees may be taxed as other costs by the Commission. After the case is  
22 concluded, the defendant shall be reimbursed for the plaintiff's share of such fees from benefits that may be  
23 determined to be due to the plaintiff, and the defendant may withhold funds from any award for this purpose.

24  
25 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 7 of Rules Implementing Statewide Mediated*  
26 *Settlement Conference in Superior Court Civil Actions;*  
27 *Eff. January 16, 1996;*  
28 *Amended Eff. October 1, 1998;*  
29 *Recodified from 4 NCAC 10A .0616;*  
30 *Amended Eff. April 1, 2014; January 1, 2011; June 1, 2000.*

1 4 NCAC 10G .01101 is amended as follows:

2

3 **4 NCAC 10G .0110 WAIVER OF RULES**

4 ~~In the interest of justice, or to comply with the law from time to time as it may be amended or declared, the~~  
5 ~~Commission may waive any requirement of these rules.~~

6 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the  
7 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a  
8 case pending before the Commission upon written application of a party or upon its own initiative only if the  
9 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the  
10 waiver are:

- 11 (1) the necessity of a waiver;  
12 (2) the party's responsibility for the conditions creating the need for a waiver;  
13 (3) the party's prior requests for a waiver;  
14 (4) the precedential value of such a waiver;  
15 (5) notice to and opposition by the opposing parties; and  
16 (6) the harm to the party if the waiver is not granted.

17

18 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300;*

19 *Eff. January 16, 1996;*

20 *Amended Eff. October 1, 1998;*

21 *Recodified from 4 NCAC 10A .0616;*

22 *Amended Eff. April 1, 2014; June 1, 2000.*



1 4 NCAC 10H .0206 is adopted as follows:

2

3 **04 NCAC 10H .0206 WAIVER OF RULES**

4 In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the  
5 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a  
6 case pending before the Commission upon written application of a party or upon its own initiative only if the  
7 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the  
8 waiver are:

9 (1) the necessity of a waiver;

10 (2) the party's responsibility for the conditions creating the need for a waiver;

11 (3) the party's prior requests for a waiver;

12 (4) the precedential value of such a waiver;

13 (5) notice to and opposition by the opposing parties; and

14 (6) the harm to the party if the waiver is not granted.

15

16 *History Note: Authority G.S. 97-80(a); 143-166.4;*

17 *Eff. April 1, 2014.*

1 4 NCAC 10I .0204 is adopted as follows:

2

3 **04 NCAC 10I .0204 WAIVER OF RULES**

4 In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the  
5 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a  
6 case pending before the Commission upon written application of a party or upon its own initiative only if the  
7 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the  
8 waiver are:

9 (1) the necessity of a waiver;

10 (2) the party's responsibility for the conditions creating the need for a waiver;

11 (3) the party's prior requests for a waiver;

12 (4) the precedential value of such a waiver;

13 (5) notice to and opposition by the opposing parties; and

14 (6) the harm to the party if the waiver is not granted.

15

16 *History Note: Authority G.S. 97-80(a); 130A-425(d);*

17 *Eff. April 1, 2014.*

1 04 NCAC 10J .0101 is amended as follows:

2  
3 **SUBCHAPTER 10J – FEES FOR MEDICAL COMPENSATION**

4  
5 **SECTION 0100 – FEES FOR MEDICAL COMPENSATION**

6  
7 **04 NCAC 10J .0101 FEES FOR MEDICAL COMPENSATION**

8 (a) The Commission has adopted and published a Medical Fee Schedule, pursuant to the provisions of G.S. 97-  
9 26(a), setting maximum amounts, except for hospital fees pursuant to G.S. 97-26(b), that may be paid for medical,  
10 surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including  
11 medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing  
12 period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical  
13 circumstances. The amounts prescribed in the applicable published Fee Schedule shall govern and apply according  
14 to G.S. 97-26(c).

15 (b) The Commission's Medical Fee Schedule contains maximum allowed amounts for medical services provided  
16 pursuant to Chapter 97 of the General Statutes. The Medical Fee Schedule utilizes 1995 through the present,  
17 Current Procedural Terminology (CPT) codes adopted by the American Medical Association, Healthcare Common  
18 Procedure Coding Systems (HCPCS) codes, and jurisdiction-specific codes. A listing of the maximum allowable  
19 amount for each code is available on the Commission's website at <http://www.ic.nc.gov/ncic/pages/feesched.asp> and  
20 in hardcopy at 430 N. Salisbury Street, Raleigh, North Carolina.

21 (c) The following methodology provides the basis for the Commission's Medical Fee Schedule:

- 22 (1) CPT codes for General Medicine are based on 1995 North Carolina Medicare values multiplied by  
23 1.58, except for CPT codes 99201-99205 and 99211-99215, which are based on 1995 Medicare  
24 values multiplied by 2.05.
- 25 (2) CPT codes for Physical Medicine are based on 1995 North Carolina Medicare values multiplied  
26 by 1.36.
- 27 (3) CPT codes for Radiology are based on 1995 North Carolina Medicare values multiplied by 1.96.
- 28 (4) CPT codes for Surgery are based on 1995 North Carolina Medicare values multiplied by 2.06.

29 (d) The Commission's Hospital Fee Schedule, adopted pursuant to G.S. 97-26(b), provides for payment as follows:

- 30 (1) Inpatient hospital fees: Inpatient services are reimbursed based on a Diagnostic Related  
31 Groupings (DRG) methodology. The Hospital Fee Schedule utilizes the 2001 Diagnostic Related  
32 Groupings adopted by the State Health Plan. Each DRG amount is based on the amount that the  
33 State Health Plan had in effect for the same DRG on June 30, 2001.

34 DRG amounts are further subject to the following payment band that establishes maximum and  
35 minimum payment amounts:

- 36 (A) The maximum payment is 100 percent of the hospital's itemized charges.

- 1 (B) For hospitals other than critical access hospitals, the minimum payment is 75 percent of  
2 the hospital's itemized charges. Effective February 1, 2013, the minimum payment rate is  
3 the amount provided for under Subparagraph (5) below, subject to adjustment on April 1,  
4 2013 as provided therein.
- 5 (C) For critical access hospitals, the minimum payment is 77.07 percent of the hospital's  
6 itemized charges. Effective February 1, 2013, the minimum payment rate is the amount  
7 provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as  
8 provided therein.
- 9 (2) Outpatient hospital fees: Outpatient services are reimbursed based on the hospital's actual charges  
10 as billed on the UB-04 claim form, subject to the following percentage discounts:
- 11 (A) For hospitals other than critical access hospitals, the payment shall be 79 percent of the  
12 hospital's billed charges. Effective February 1, 2013, the payment is the amount provided  
13 for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided  
14 therein.
- 15 (B) For critical access hospitals, the payment shall be 87 percent of the hospital's billed  
16 charges. For purposes of the hospital fee schedule, critical access hospitals are those  
17 hospitals designated as such pursuant to federal law (42 CFR 485.601 et seq.). Effective  
18 February 1, 2013, the critical access hospital's payment is the amount provided for under  
19 Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- 20 (3) Ambulatory surgery fees: Ambulatory surgery center services are reimbursed at 79 percent of  
21 billed charges. Effective February 1, 2013, the ambulatory surgery center services are reimbursed  
22 at the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013  
23 as provided therein.
- 24 (4) Other rates: If a provider has agreed under contract with the insurer or managed care organization  
25 to accept a different amount or reimbursement methodology, that amount or methodology  
26 establishes the applicable fee.
- 27 (5) Payment levels frozen and reduced pending study of new fee schedule: Effective February 1,  
28 2013, inpatient and outpatient payments for each hospital and the payments for each ambulatory  
29 surgery center shall be set at the payment rates in effect for those facilities as of June 30, 2012.  
30 Effective April 1, 2013, those rates shall then be reduced as follows:
- 31 (A) Hospital outpatient and ambulatory surgery: The rate in effect as of that date shall be  
32 reduced by 15 percent.
- 33 (B) Hospital inpatient: The minimum payment rate in effect as of that date shall be reduced  
34 by 10 percent.
- 35 (6) Effective April 1, 2013, implants shall be paid at no greater than invoice cost plus 28 percent.

1 (e) Employers, insurers, and managed care organizations, or administrators on their behalf, may review and  
2 reimburse charges for medical compensation, including, but not limited to, medical, hospital, and dental fees,  
3 without submitting the charges to the Commission for review and approval.

4 (ef) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of  
5 the service, or if treatment is longer, within 30 days after the end of the month during which multiple treatments  
6 were provided. However, in cases where liability is initially denied but subsequently admitted or determined by the  
7 Commission, the time for submission of medical bills shall run from the time the health care provider received  
8 notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer,  
9 carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the  
10 Commission for approval or send the provider written objections to the statement. If an employer, carrier,  
11 administrator, or managed care organization disputes a portion of the provider's bill, the employer, carrier,  
12 administrator, or managed care organization, shall pay the uncontested portion of the bill and shall resolve disputes  
13 regarding the balance of the charges through its contractual arrangement or through the Commission.

14 (fg) Pursuant to G.S. 97-18(i), when the 10 percent addition to the bill is uncontested, payment shall be made to the  
15 provider without notifying or seeking approval from the Commission. When the 10 percent addition to the bill is  
16 contested, any party may request a hearing by the Commission pursuant to G.S. 97-83 and G.S. 97-84.

17 (gh) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the  
18 payee hospital, upon request, shall provide reasonable access and copies of appropriate records, without charge or  
19 fee, to the person(s) chosen by the payor to review and audit the records.

20 (hi) The responsible employer, carrier, managed care organization, or administrator shall pay the statements of  
21 medical compensation providers to whom the employee has been referred by the treating physician authorized by  
22 the insurance carrier for the compensable injury or body part, unless the physician has been requested to obtain  
23 authorization for referrals or tests; provided that compliance with the request shall not unreasonably delay the  
24 treatment or service to be rendered to the employee.

25 (ij) Employees are entitled to reimbursement for sick travel when the travel is medically necessary and the mileage  
26 is 20 or more miles, round trip, at the business standard mileage rate set by the Internal Revenue Service per mile of  
27 travel and the actual cost of tolls paid. Employees are entitled to lodging and meal expenses, at a rate to be  
28 established for state employees by the North Carolina Director of Budget, when it is medically necessary that the  
29 employee stay overnight at a location away from the employee's usual place of residence. Employees are entitled to  
30 reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual  
31 costs of the expenses.

32 (jk) Any employer, carrier or administrator denying a claim in which medical care has previously been authorized is  
33 responsible for all costs incurred prior to the date notice of denial is provided to each health care provider to whom  
34 authorization has been previously given.

35  
36 *History Note: Authority G.S. 97-18(i); 97-25; 97-25.6; 97-26; 97-80(a); 138-6;*  
37 *Eff. January 1, 1990;*

*Amended Eff. July 1, 2014; January 1, 2013; June 1, 2000.*

1 4 NCAC 10L .0101 is adopted as follows:

2  
3 **SUBCHAPTER 10L – INDUSTRIAL COMMISSION FORMS**  
4 **SECTION .0100 – WORKERS’ COMPENSATION FORMS**  
5

6 **04 NCAC 10L .0101 FORM 21 – AGREEMENT FOR COMPENSATION FOR DISABILITY**  
7

8 (a) The parties to a workers’ compensation claim shall use the following Form 21, Agreement for Compensation for  
9 Disability, for agreements regarding disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-  
10 30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability  
11 may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where applicable.  
12 The Form 21, Agreement for Compensation for Disability, shall read as follows:  
13

14 North Carolina Industrial Commission  
15 Agreement for Compensation for Disability  
16 (G.S. 97-82)  
17

18 IC File # \_\_\_\_\_  
19 Emp. Code # \_\_\_\_\_  
20 Carrier Code # \_\_\_\_\_  
21 Carrier File # \_\_\_\_\_  
22 Employer FEIN \_\_\_\_\_  
23

24 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act  
25

26 \_\_\_\_\_  
27 Employee’s Name

28 \_\_\_\_\_  
29 Address

30 \_\_\_\_\_  
31 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

32 \_\_\_\_\_  
33 Home Telephone \_\_\_\_\_ Work Telephone \_\_\_\_\_

34 Social Security Number: \_\_\_\_\_ Sex:  M  F Date of Birth: \_\_\_\_\_  
35

36 \_\_\_\_\_  
37 Employer's Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

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\_\_\_\_\_  
Employer's Address City State Zip

\_\_\_\_\_  
Insurance Carrier

\_\_\_\_\_  
Carrier's Address City State Zip

\_\_\_\_\_  
Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and \_\_\_\_\_ is the carrier/administrator for the employer.

2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on or by \_\_\_\_\_

3. The injury by accident or occupational disease resulted in the following injuries: \_\_\_\_\_

4. The employee  was/  was not paid for the entire day when the injury occurred.

5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$ \_\_\_\_\_, subject to verification unless otherwise agreed upon in line 9 below.

6. Disability resulting from the injury or occupational disease began on \_\_\_\_\_

7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$ \_\_\_\_\_ per week beginning \_\_\_\_\_, and continuing for \_\_\_\_\_ weeks.

8. The employee  has /  has not returned to work for \_\_\_\_\_ on \_\_\_\_\_, at an average weekly wage of \$ \_\_\_\_\_.

9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial disability: \_\_\_\_\_

10. If applicable, the Second Injury Fund Assessment is \$ \_\_\_\_\_. Check  is  is not attached.

11. The date of this agreement is \_\_\_\_\_. Date of first payment: \_\_\_\_\_ Amount: \_\_\_\_\_

12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.

Check one of the boxes below if the award is more than \$3,000.00:

The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

The employee and employer have agreed that the employer will pay the entire fee.



1 Name Of Employer Signature Title  
2 \_\_\_\_\_

3 Name Of Carrier / Administrator Signature Title  
4 \_\_\_\_\_

5 By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on  
6 the Pages 1 and 2 of this form.

7 \_\_\_\_\_  
8 Signature of Employee Address

9 \_\_\_\_\_  
10 Signature of Employee's Attorney Address

11 \_\_\_\_\_  
12 North Carolina Industrial Commission

13 The Foregoing Agreement Is Hereby Approved:  
14 \_\_\_\_\_

15 Claims Examiner Date  
16 \_\_\_\_\_

17 Attorney's Fee Approved

18 \_\_\_\_\_  
19  Check Box If No Attorney Retained.

20  Check Box If Employee Is In Managed Care.

21 \_\_\_\_\_  
22 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM  
23 PAYMENTS

24 \_\_\_\_\_  
25 Once your compensation checks have been stopped, if you claim further compensation, you must notify the  
26 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your  
27 rights to these benefits may be lost.

28 \_\_\_\_\_  
29 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL  
30 MEDICAL BENEFITS

31 \_\_\_\_\_  
32 If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably  
33 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

34 \_\_\_\_\_  
35 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL  
36 MEDICAL BENEFITS

37 \_\_\_\_\_

1 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several  
2 factors. Your right to payment of future medical compensation will terminate two years after your employer or  
3 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think  
4 you will need future medical compensation, you must apply to the Industrial Commission in writing within two  
5 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M.

6  
7 IMPORTANT NOTICE TO EMPLOYER

8  
9 The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B,  
10 Report Of Compensation And Medical Compensation Paid, within 16 days after last payment pursuant to this  
11 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 501, within 20 days after  
12 receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement  
13 to the Industrial Commission, or show good cause for not submitting the agreement.

14  
15 NEED ASSISTANCE?

16  
17 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at  
18 (800) 688-8349.

19  
20 Form 21

21 4/2014

22  
23 Self-Insured Employer or Carrier, Mail to:

24 NCIC - Claims Section

25 4335 Mail Service Center

26 Raleigh, NC 27699-4335

27 Telephone: (919) 807-2502

28 Helpline: (800) 688-8349

29 Website: <http://www.ic.nc.gov/>

30  
31 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed  
32 at <http://www.ic.nc.gov/forms/form21.pdf>. The form may be reproduced only in the format available  
33 at <http://www.ic.nc.gov/forms/form21.pdf> and may not be altered or amended in any way.

34  
35 *History Note: Authority G.S. 97-80(a); 97-82;*

36 *Eff. April 1, 2014.*

1 4 NCAC 10L .0102 is adopted as follows:

2  
3 **SUBCHAPTER 10L – INDUSTRIAL COMMISSION FORMS**  
4 **SECTION .0100 – WORKERS’ COMPENSATION FORMS**

5  
6 **4 NCAC 10L .0102 FORM 26 – SUPPLEMENTAL AGREEMENT AS TO PAYMENT OF**  
7 **COMPENSATION**  
8

9 (a) If the parties to a workers’ compensation claim have previously entered into an approved agreement on a Form  
10 21, *Agreement for Compensation for Disability*, or a Form 26A, *Employer’s Admission of Employee’s Right to*  
11 *Permanent Partial Disability*, they shall use the following Form 26, *Supplemental Agreement as to Payment of*  
12 *Compensation*, for agreements regarding subsequent, additional disability and payment of compensation therefor  
13 pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation  
14 for permanent partial disability may also be included on the form. This form is necessary to comply with 04 NCAC  
15 10A .0501, where applicable. The Form 26, *Supplemental Agreement as to Payment of Compensation*, shall read as  
16 follows:

17  
18 North Carolina Industrial Commission  
19 Supplemental Agreement as to Payment \_\_\_\_\_  
20 of Compensation (G.S. §97-82)

21  
22 IC File # \_\_\_\_\_  
23 Emp. Code # \_\_\_\_\_  
24 Carrier Code # \_\_\_\_\_  
25 Carrier File # \_\_\_\_\_  
26 Employer FEIN \_\_\_\_\_

27  
28 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

29  
30 \_\_\_\_\_  
31 Employee’s Name  
32 \_\_\_\_\_  
33 Address  
34 \_\_\_\_\_  
35 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
36 \_\_\_\_\_  
37 Home Telephone \_\_\_\_\_ Work Telephone \_\_\_\_\_

1 Social Security Number: \_\_\_\_\_ Sex:  M  F Date of Birth: \_\_\_\_\_

2

3

4 Employer's Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

5

6 Employer's Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

7

8 Insurance Carrier \_\_\_\_\_

9

10 Carrier's Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

11

12 Carrier's Telephone Number \_\_\_\_\_ Carrier's Fax Number \_\_\_\_\_

13

14 We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

15 1. Date of injury: \_\_\_\_\_

16 2. The employee  returned to work /  was rated on \_\_\_\_\_ (date), at a weekly wage of \$ \_\_\_\_\_.

17 3. The employee became totally disabled on \_\_\_\_\_.

18 4. Employee's average weekly wage  was reduced /  was increased on \_\_\_\_\_, from \$ \_\_\_\_\_  
19 per week to \$ \_\_\_\_\_ per week.

20 5. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate  
21 of \$ \_\_\_\_\_ per week

22 Beginning \_\_\_\_\_, and continuing for \_\_\_\_\_ weeks. The type of disability compensation is

23 \_\_\_\_\_

24 6. State any further matters agreed upon, including disfigurement or temporary partial disability:

25 \_\_\_\_\_

26 7. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement  
27 is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of  
28 the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your  
29 award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer  
30 agree otherwise.

31 Check one of the boxes below if the award is more than \$3,000.00:

32  The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

33  The employee and employer have agreed that the employer will pay the entire fee.

34 8. The date of this agreement is \_\_\_\_\_.

35 \_\_\_\_\_

36 Name Of Employer \_\_\_\_\_ Signature \_\_\_\_\_ Title \_\_\_\_\_

37 \_\_\_\_\_

1 Name Of Carrier/Administrator Signature Title

2

3 By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on  
4 Pages 1 and 2 of this form.

5

6 Signature of Employee Address

7

8 Signature of Employee's Attorney Address

9

10  Check box if no attorney retained.

11

12 North Carolina Industrial Commission

13 The Foregoing Agreement Is Hereby Approved:

14

15 Claims Examiner Date

16

17 Attorney's fee approved

18

19 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM  
20 PAYMENTS

21 Once your compensation checks have been stopped, if you claim further compensation, you must notify the  
22 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your  
23 rights to these benefits may be lost.

24

25 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE 5 JULY 1994 CLAIMING ADDITIONAL  
26 MEDICAL BENEFITS

27 If your injury occurred before 5 July 1994, you are entitled to medical compensation as long as it is reasonably  
28 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

29

30 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER 5 JULY 1994 CLAIMING ADDITIONAL  
31 MEDICAL BENEFITS

32 If your injury occurred on or after 5 July 1994, your right to future medical compensation will depend on several  
33 factors. Your right to payment of future medical compensation will terminate two years after your employer or  
34 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think  
35 you will need future medical compensation, you must apply to the Industrial Commission in writing within two  
36 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M.

37

1 IMPORTANT NOTICE TO EMPLOYER

2  
3 This form is to be used only to supplement Form 21, Agreement for Compensation for Disability (G.S. 97-82), or an  
4 award in cases in which subsequent conditions require a modification of a former agreement or award. The  
5 employee must be provided a copy of the form when the agreement is signed by the employee. Failure to file Form  
6 28B, Report of Compensation and Medical Compensation Paid, within 16 days after last payment pursuant to this  
7 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 501, within 20 days  
8 after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the  
9 agreement to the Industrial Commission, or show good cause for not submitting the agreement.

10  
11 NEED ASSISTANCE?

12  
13 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at  
14 (800) 688-8349.

15  
16 Form 26  
17 4/2014

18  
19 Self-Insured Employer or Carrier Mail to:  
20 NCIC - Claims Administration  
21 4335 Mail Service Center  
22 Raleigh, North Carolina 27699-4335  
23 Main Telephone: (919) 807-2500  
24 Helpline: (800) 688-8349  
25 Website: <http://www.ic.nc.gov/>

26  
27 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed at  
28 <http://www.ic.nc.gov/forms/form26.pdf>. The form may be reproduced only in the format available at  
29 <http://www.ic.nc.gov/forms/form26.pdf> and may not be altered or amended in any way.

30  
31 *History Note: Authority G.S. 97-80(a); 97-82;*  
32 *Eff. April 1, 2014.*

1 4 NCAC 10L .0103 is adopted as follows:

2  
3 **SUBCHAPTER 10L – INDUSTRIAL COMMISSION FORMS**  
4 **SECTION .0100 – WORKERS’ COMPENSATION FORMS**

5  
6 **4 NCAC 10L .0103 FORM 26A – Employer’s Admission of Employee’s Right to Permanent Partial**  
7 **Disability**

8  
9 (a) The parties to a workers’ compensation claim shall use the following Form 26A, *Employer’s Admission of*  
10 *Employee’s Right to Permanent Partial Disability*, for agreements regarding the employee’s entitlement to and the  
11 employer’s payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues  
12 agreed upon by the parties, including, but not limited to, election of payment of temporary partial disability pursuant  
13 to G.S. 97-30 may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where  
14 applicable. The Form 26A, *Employer’s Admission of Employee’s Right to Permanent Partial Disability*, shall read  
15 as follows:

16  
17 North Carolina Industrial Commission  
18 Employer’s Admission of Employee’s Right to Permanent Partial Disability  
19 (G.S. §97-31)

20  
21 IC File # \_\_\_\_\_  
22 Emp. Code # \_\_\_\_\_  
23 Carrier Code # \_\_\_\_\_  
24 Carrier File # \_\_\_\_\_  
25 Employer FEIN \_\_\_\_\_

26  
27 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

28  
29 \_\_\_\_\_  
30 Employee’s Name

31 \_\_\_\_\_  
32 Address

33 \_\_\_\_\_  
34 City State Zip

35 \_\_\_\_\_  
36 Home Telephone Work Telephone

37 Social Security Number: Sex:  M  F Date of Birth: \_\_\_\_\_

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\_\_\_\_\_  
Employer's Name \_\_\_\_\_ Telephone Number

\_\_\_\_\_  
Employer's Address \_\_\_\_\_ City State Zip

\_\_\_\_\_  
Insurance Carrier

\_\_\_\_\_  
Carrier's Address \_\_\_\_\_ City State Zip

\_\_\_\_\_  
Carrier's Telephone Number \_\_\_\_\_ Carrier's Fax Number

WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

- 1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and \_\_\_\_\_ is the Carrier/Administrator for the Employer.
- 2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on \_\_\_\_\_.
- 3. The injury by accident or occupational disease resulted in the following injuries:  
\_\_\_\_\_.
- 4. The employee  was  was not paid for the 7 day waiting period.

If not, was salary continued?  yes  no. Was employee paid for the date of injury?  yes  no

- 5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$ \_\_\_\_\_. This results in a weekly compensation rate of \$ \_\_\_\_\_.
- 6. The employee  has  has not returned full time to work for \_\_\_\_\_ on \_\_\_\_\_, at an average weekly wage of \$ \_\_\_\_\_.
- 7. Claimant was released  with permanent restrictions  without permanent restrictions.
- 8. Permanent partial disability compensation will be paid to the injured worker as follows:

\_\_\_\_\_ weeks of compensation at rate of \$ \_\_\_\_\_ per week for \_\_\_\_\_ % rating to \_\_\_\_\_ (body part)

\_\_\_\_\_ weeks of compensation at rate of \$ \_\_\_\_\_ per week for \_\_\_\_\_ % rating to \_\_\_\_\_ (body part)

\_\_\_\_\_ weeks of compensation at rate of \$ \_\_\_\_\_ per week for \_\_\_\_\_ % rating to \_\_\_\_\_ (body part)

Total amount of permanent partial disability compensation is \$ \_\_\_\_\_. Date of first payment: \_\_\_\_\_.

- 9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other:  
\_\_\_\_\_.
- 10. An overpayment is claimed in the amount of \$ \_\_\_\_\_. Overpayment was calculated as follows: \_\_\_\_\_.





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IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M.

IMPORTANT NOTICE TO EMPLOYER

The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B, Report Of Compensation And Medical Compensation Paid, within 16 days after last payment pursuant to this agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show good cause for not submitting the agreement.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26A  
1/2014

Self-Insured Employer or Carrier Mail to:  
NCIC - Claims Administration  
4335 Mail Service Center

1 Raleigh, North Carolina 27699-4335

2 Main Telephone: (919) 807-2500

3 Helpline: (800) 688-8349

4 Website: <http://www.ic.nc.gov/>

5

6 (b) A copy of the form described in Paragraph (a) of this Rule can be accessed at

7 <http://www.ic.nc.gov/forms/form26a.pdf>. The form may be reproduced only in the format available at

8 <http://www.ic.nc.gov/forms/form26a.pdf> and may not be altered or amended in any way.

9

10 *History Note: Authority G.S. 97-30; 97-31; 97-80(a); 97-82;*

11 *Eff. April 1, 2014.*

1 4 NCAC 10L .0104 is adopted as follows:

2  
3 **SUBCHAPTER 10L – INDUSTRIAL COMMISSION FORMS**  
4 **SECTION .0100 – WORKERS’ COMPENSATION FORMS**  
5

6 **4 NCAC 10L .0104 FORM 36 – SUBPOENA**  
7

8 (a) The parties to a workers’ compensation claim shall use the following Form 36, Subpoena, to subpoena a  
9 person(s) to appear and testify and/or produce documents for inspection before the Commission. The Form 36,  
10 Subpoena, shall read as follows:

11  
12 STATE OF NORTH CAROLINA File No. \_\_\_\_\_  
13 \_\_\_\_\_ County North Carolina Industrial Commission  
14 \_\_\_\_\_

15 VERSUS  
16 \_\_\_\_\_

17 SUBPOENA

18 G.S. 1A-1, Rule 45; G.S. 8-59; G.S. 97-80(e)

19 Party Requesting Subpoena

20 NCIC/State/Plaintiff Defendant

21 NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but  
22 must be signed and issued by a Commissioner, Deputy Commissioner, or the Executive Secretary.

23 TO: Name and Address Of Person Subpoenaed \_\_\_\_\_

24 Alternate Address \_\_\_\_\_

25 Telephone No. \_\_\_\_\_

26 Alternate Telephone No. \_\_\_\_\_

27 YOU ARE COMMANDED TO: (check all that apply):

28 appear and testify, in the above entitled action, before the Industrial Commission at the place, date and time  
29 indicated below.

30 appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.

31 produce and permit inspection and copying of the following items, at the place, date and time indicated below.

32 See attached list. (List here if space sufficient)  
33 \_\_\_\_\_

34 Location Of Hearing/Place Of Deposition/Place To Produce \_\_\_\_\_

35 Date To Appear/Produce \_\_\_\_\_

36 Time To Appear/Produce : AM PM

37 Name And Address Of Applicant Or Applicant's Attorney \_\_\_\_\_

1 Date \_\_\_\_\_  
2 Signature of Official or Attorney \_\_\_\_\_  
3 Deputy Commissioner Commissioner Executive Secretary Attorney  
4 Telephone No. Of Applicant Or Applicant's Attorney \_\_\_\_\_

5 RETURN OF SERVICE

6 I certify this subpoena was received and served on the person subpoenaed as follows:

7 By \_\_\_\_\_  
8 \_\_\_\_\_ personal delivery.  
9 \_\_\_\_\_ registered or certified mail, receipt requested and attached.  
10 \_\_\_\_\_ service by Sheriff.

11 \_\_\_\_\_ I was unable to serve this subpoena. Reason unable to serve: \_\_\_\_\_

12 Service Fee \$ \_\_\_\_\_

13 \_\_\_\_\_ Paid

14 \_\_\_\_\_ Due

15 Date Served \_\_\_\_\_

16 Name Of Authorized Server (Type Or Print) \_\_\_\_\_

17 Signature of Authorized Server \_\_\_\_\_

18 Title \_\_\_\_\_

19 NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to  
20 the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or  
21 delivered to the party. This does not apply in criminal cases.

22 NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).

23 (c) Protection of Persons Subject to Subpoena

24 (1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena  
25 shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The  
26 court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an  
27 appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable  
28 attorney's fees.

29 (2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of  
30 public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose  
31 of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal  
32 appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery,  
33 on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the  
34 subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records  
35 were made and kept in the regular course of business, or if no such records are in the custodian's custody, an  
36 affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be  
37 obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered

1 according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or  
2 proceeding without further certification or authentication. Copies of hospital medical records tendered under this  
3 subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings  
4 and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing  
5 contained herein shall be construed to waive the physician-patient privilege or to require any privileged  
6 communication under law to be disclosed.

7 (3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a  
8 deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically  
9 stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified  
10 for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the  
11 subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written  
12 objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for  
13 objecting to a subpoena:

14 a. The subpoena fails to allow reasonable time for compliance.

15 b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the  
16 privilege or protection.

17 c. The subpoena subjects a person to an undue burden or expense.

18 d. The subpoena is otherwise unreasonable or oppressive.

19 e. The subpoena is procedurally defective.

20 (4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the  
21 party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to  
22 inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection  
23 is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to  
24 compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the  
25 subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is  
26 to occur.

27 (5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to  
28 produce and permit the inspection and copying of records, books, papers, documents, electronically  
29 stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified  
30 for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The  
31 court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons  
32 set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial,  
33 hearing, deposition, or production of materials is to occur.

34 (6) Order to compel; expenses to comply with subpoena. - When a court enters an order compelling a deposition or  
35 the production of records, books, papers, documents, electronically stored information, or other tangible things, the  
36 order shall protect any person who is not a party or an agent of a party from significant expense resulting from  
37 complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be

1 reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored  
2 information, or tangible things specified in the subpoena.

3 (7) Trade secrets; confidential information. - When a subpoena requires disclosure of a trade secret or other  
4 confidential research, development, or commercial information, a court may, to protect a person subject to or  
5 affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued  
6 shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the  
7 court may order a person to make an appearance or produce the materials only on specified conditions stated in the  
8 order.

9 (8) Order to quash; expenses. - When a court enters an order quashing or modifying the subpoena, the court may  
10 order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable  
11 expenses including attorney's fees.

12 (d) Duties in Responding to Subpoena

13 (1) Form of response. - A person responding to a subpoena to produce records, books, documents, electronically  
14 stored information, or tangible things shall produce them as they are kept in the usual course of business or shall  
15 organize and label them to correspond with the categories in the request.

16 (2) Form of producing electronically stored information not specified. - If a subpoena does not specify a form for  
17 producing electronically stored information, the person responding must produce it in a form or forms in which it  
18 ordinarily is maintained or in a reasonably useable form or forms.

19 (3) Electronically stored information in only one form. - The person responding need not produce the same  
20 electronically stored information in more than one form.

21 (4) Inaccessible electronically stored information. - The person responding need not provide discovery of  
22 electronically stored information from sources that the person identifies as not reasonably accessible because of  
23 undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show  
24 that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court  
25 may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the  
26 limitations of Rule 26(b)(1a). The court may specify conditions for discovery, including requiring the party that  
27 seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the  
28 electronically stored information involved.

29 (5) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject  
30 to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with  
31 specificity and shall be supported by a description of the nature of the communications, records, books, papers,  
32 documents, electronically stored information, or other tangible things not produced, sufficient for the requesting  
33 party to contest the objection.

34 INFORMATION FOR WITNESS

35 NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on  
36 Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

37 DUTIES OF A WITNESS

- 1 • Unless otherwise directed by the presiding Deputy Commissioner or Commissioner, you must answer all
- 2 questions asked when you are on the stand giving testimony.
- 3 • In answering questions, speak clearly and loudly enough to be heard.
- 4 • Your answers to questions must be truthful.
- 5 • If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- 6 • You must continue to attend court until released by the court. You must continue to attend a deposition
- 7 until the deposition is completed.

8 **BRIBING OR THREATENING A WITNESS**

9 It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone

10 attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report

11 that to the presiding Deputy Commissioner or Commissioner.

12

13 Form 36 (Rev. 1/14)

14

15 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed at

16 <http://www.ic.nc.gov/forms/form36.pdf>. The form may be reproduced only in the format available at

17 <http://www.ic.nc.gov/forms/form36.pdf> and may not be altered or amended in any way.

18

19 *History Note: Authority G.S. 1A-1, Rule 45; 8-59; 97-80(a),(e);*

20 *Eff. April 1, 2014.*